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code of federal regulations

Pensions, Bonuses, and Veterans' Relief

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38

PARTS 0 TO 17

Revised as of July 1, 1981

022-003-94641-1

code of federal regulations

Pensions, Bonuses, and Veterans' Relief

38

PARTS 0 TO 17

Revised as of July 1, 1981

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As of July 1, 1981

Title 38, Revised as of
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Is Replaced by Two Volumes

Title 38, Parts 0 to 17
Title 38, Part 18 to End

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Cite this Code **CFR**

thus: **38 CFR 0.735–1**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16 ..... as of January 1
Title 17 through Title 27 ..... as of April 1
Title 28 through Title 41 ..... as of July 1
Title 42 through Title 50 ..... as of October 1

The appropriate revision date is printed on the cover of each volume.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1981.

THIS TITLE

Title 38—PENSIONS, BONUSES AND VETERANS' RELIEF is composed of two volumes, Parts 0–17 and Part 18 to End. The contents of these volumes represent all current regulations of the Veterans' Administration codified under this title of the CFR as of July 1, 1981.

For this volume Mildred L. Isler was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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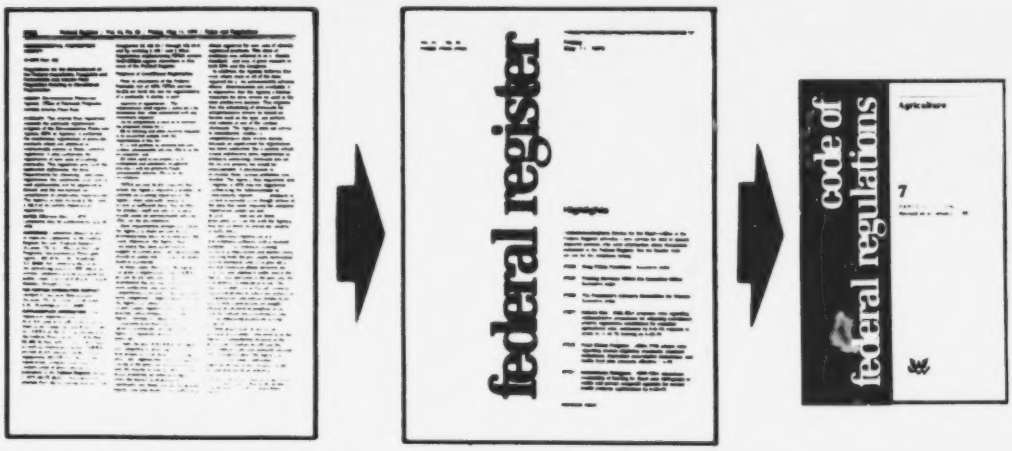

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Title 38—Pensions, Bonuses, and Veterans' Relief

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AUTHORITY: E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.104.

SOURCE: 31 FR 5828, Apr. 15, 1966, unless otherwise noted.

Subpart A—General Provisions

§ 0.735–1 Purpose.

For proper performance of the Government business and the maintenance of confidence by citizens in their Government, employees and special Government employees in the Veterans Administration shall maintain the highest possible standards of honesty, integrity, impartiality, and conduct. They shall avoid misconduct and conflicts of interest through informed judgment, as an indispensable means to the maintenance of these high standards.

§ 0.735–2 Definitions.

For the purposes of this part:

(a) "Employee" means an officer or employee of the Veterans Administration, except a special Government employee.

(b) "Special Government employee" means an officer or employee of the Veterans Administration who is retained, designated, appointed, or otherwise employed to perform, with or without compensation, for 130 days or less during any period of 365 consecutive days, temporary duties either on a

full-time, part-time, or intermittent basis.

(c) Where appropriate to the meaning and not explained in this part, the term "person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 0.735–3 Informing employees.

(a) Each new employee and special Government employee will be furnished a copy of this part or a comprehensive summary at the time of his entrance on duty and will be notified at that time of the availability of counseling services on conduct matters and of how and where these services are available.

(b) Annually, and at such other times as circumstances warrant, this part will be brought to the attention of each employee and special Government employee.

(c) Each station shall have available for review by employees and special Government employees, as appropriate, copies of Executive Order 11222 of May 8, 1965, and copies of laws and pertinent Veterans Administration and Civil Service Commission regulations and instructions relating to ethical and other conduct.

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 3173, Feb. 20, 1968]

§ 0.735–4 Interpretation and advisory service.

(a) An Assistant General Counsel of the Office of the General Counsel is designated by the Administrator to be Counselor for the Veterans Administration. In addition, an official of the same office is designated as Deputy to the Counselor to act for the Counselor in his absence. The Counselor will have responsibility for:

(1) Interpreting for the Veterans Administration the laws, Executive Order 11222, Civil Service Commission regulations and instructions, and the regulations in this part.

(2) Representing the Veterans Administration before the Civil Service Commission on conduct matters.

(3) Coordinating counseling services on conduct for employees and special Government employees.

(4) Resolving questions of conflict or apparent conflict of interest and other matters covered in this part.

(5) Assuring that counseling and interpretations of a precedential nature are made available to deputy counselors designated in paragraphs (b), (c), and (d) of this section.

(6) Reviewing statements of employment and financial interests in connection with unresolved questions of conflict of interest referred for the Administrator's decision, and recommending decision and remedial action to be taken.

(b) The General Counsel may designate one or more officials in his office as Deputy Counselors (legal) to assist the Counselor in any of the responsibilities listed in paragraph (a) of this section and to perform in Central Office the functions detailed in paragraph (c) of this section.

(c) Chief Attorneys are designated as Deputy Counselors (legal). They will review and render counsel and interpretations on questions of conflict of interest and other matters covered by the conduct regulations in this part at the request of Deputy Counselors (Personnel Officers) or at the specific request of employees or special Government employees. The Deputy Counselors (legal) will be guided by the interpretations of the Counselor on the pertinent laws and regulations. In case of doubt regarding any question, or disagreement of interpretation between deputy counselors and employees or special Government employees, the Deputy Counselor (legal) may submit the matter to the Counselor for consideration, furnishing a copy to the appropriate Department Head.

(d) Personnel Officers are designated as deputy counselors. They will give advice and guidance to employees (includes management officials; see definition of employee in § 0.735–2(a)) and special Government employees on conduct matters as requested. They may submit questions to the deputy counselors (legal) on their own initiative or at the specific request of an employee or special Government employee or may request interpretations by the Counselor through the deputy counselors (legal).

(e) An employee (includes management officials) or special Government employee who has a question on any matter within the scope of this part may seek an answer through this counseling system.

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 3173, Feb. 20, 1968]

§ 0.735–5 Violation of regulations.

Violation of the regulations in this part by an employee or special Government employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

Subpart B—Standards of Ethical Conduct and Related Responsibilities of Employees

§ 0.735–10 General requirements.

(a) Each Veterans Administration employee shall be expected to serve diligently, loyally, and cooperatively; to exercise courtesy and dignity; and to conduct himself, both on and off duty, in a manner reflecting credit upon himself and the Veterans Administration.

(b) An employee shall avoid any action which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person, group, or organization;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(c) Employees shall not discriminate on the ground of race, color, sex, religion, or national origin in providing benefits under any law administered by the Veterans Administration. They shall not discriminate on those grounds or any other improper ground in any employment matter. Employees are responsible to cooperate in making equal opportunity for all a reality in the Veterans Administration.

(d) An employee shall not attempt to accomplish indirectly—through his immediate family or otherwise—any activity which he is prohibited from doing directly.

(e) Veterans Administration management and supervisors shall encourage the good conduct of employees by setting the example, by dealing with them considerately and impartially, and by showing sincere concern for them as individuals.

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 18375, Dec. 11, 1968]

§ 0.735–11 Gifts, entertainment and favors.

(a) Except as provided in paragraphs (b) and (f) of this section, an employee shall not solicit or accept directly or indirectly for himself or any member of his family, any gift, gratuity, favor, entertainment, loan, or anything of monetary value, from a person (individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization or institution) who:

(1) Has, or is seeking contractual or other business or financial relations with the Veterans Administration;

(2) Conducts operations or activities regulated by the Veterans Administration;

(3) Has interests that may be substantially affected by the performance or nonperformance of his official duty; or

(4) Is attempting to influence the employee's official actions.

(b) The restrictions set forth in paragraph (a) of this section do not apply when:

(1) It is clear that the motivating factor is the family or personal relationship (such as that between the employee and his parents, children, or spouse) rather than the business relationship of the persons concerned;

(2) Food and refreshments of nominal value are infrequently accepted when offered in the ordinary course of a coffee break, luncheon or dinner meeting, or other meeting, while on official business or on an inspection tour where an employee may properly be in attendance;

(3) Loans from banks or other financial institutions are sought on custom-

ary terms to finance proper and usual activities of employees, such as home mortgage loans;

(4) Advertising or promotional material is unsolicited and of nominal intrinsic value (such as pens, pencils, note pads, or calendars);

(5) Common courtesy gifts such as flowers are indicated on appropriate occasions.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee is prohibited from accepting gifts or gratuities such as goods, money, services, purchases at discount, entertainment or similar favors from claimants, patients, ex-patients, or other beneficiaries of the Veterans Administration, or their relatives, friends, or agents, since it could be interpreted that the favors are in return for official services rendered. The Administrator may authorize exceptions to this prohibition where such action would not contravene the overall intent of this part.

(e) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(f) Neither this section nor § 0.735–12 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law for expenses of travel and such other necessary subsistence, as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person (individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization or institution) for travel on official business under Veterans Administration orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 3173, Feb. 20, 1968; 33 FR 18375, Dec. 11, 1968]

§ 0.735–12 Outside employment, activity or compensation.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include but are not limited to those which:

(1) Involve the acceptance of a fee, compensation, gift, payment of expense or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest;

(2) Tend to impair his mental or physical capacity to perform his Veterans Administration duties and responsibilities in an acceptable manner;

(3) Bring discredit upon, are disadvantageous to, embarrass, or cause or may cause unfavorable and reasonable criticism of the Federal Government or the Veterans Administration;

(4) Conflict with the interests of the Veterans Administration or the Federal Government or can possibly be construed by the public to be official acts of the Veterans Administration;

(5) Involve the use of information obtained as a result of employment in the Veterans Administration, to the detriment of the Veterans Administration or those served by it;

(6) Take time or attention during duty hours, or consist of the private practice of a recognized profession to the extent that the employee appears to be privately practicing his profession during official duty hours;

(7) Violate a regulation, Executive order, or a Federal, State, or local statute or ordinance;

(8) Tend to create suspicion of prejudice or favoritism in the administration of benefits to eligible veterans

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that could be of embarrassment to the Veterans Administration.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his or her services to the Government. This does not apply to employees working without compensation. (18 U.S.C. 209)

(c) Employees are encouraged to engage in teaching, lecturing, and writing not prohibited by law, Executive Order 11222, Part 735 of the Civil Service Regulations (5 CFR Part 735), the conduct regulations of this part or other agency policy. An employee shall not, however:

(1) Engage, with or without compensation, in teaching, lecturing or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or of the Board of Examiners for the Foreign Service, that depends on information obtained as a result of his or her Government employment, except when that information has been made available to the general public or will be made available on request, or when the Administrator gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(2) If he or she is a Presidential appointee covered by section 401(a) of Executive Order 11222, receive compensation, an honorarium, or anything of monetary value for any consultation, lecture, discussion, writing or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(3) Accept any honorarium of more than $2,000 (excluding amounts accepted for actual travel and subsistence expenses for such person and his or her spouse or an aide to such person, and excluding amounts paid or incurred for any agents' fees or commissions) for any appearance, speech, or article, or honorariums aggregating more than $25,000 in any calendar year. (Pub. L. 94-283 (90 Stat. 475), Federal Election Campaign Act Amendments of 1976)

(d) Employees are not prevented from:

(1) Receiving reimbursement in accordance with § 0.735-11(f).

(2) Participating in the activities of National or State political parties not proscribed by law.

(3) Participating in the affairs of or accepting an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(4) Engaging in outside employment permitted under this part.

(5) Taking part as a citizen of his or her community in civic, charitable, religious and other community efforts.

(e) Employees are encouraged to take part in service organization activities that do not conflict with, or give the appearance of conflicting with, Veterans Administration employment. Thus, an employee may hold an office or position at any level, provided that the combination of Veterans Administration position and service organization position cannot be construed as giving advantage to that organization, and if the employee agrees to disqualify himself or herself from taking part in any activities directed at the Veterans Administration, its policies, procedures or programs, or claims for benefits administered by the Veterans Administration. An employee may not act as a service officer preparing and presenting claims against the Government. Each employee is responsible for assuring that his or her intended actions are proper and, when in doubt, shall use the interpretation and advisory service established by § 0.735-4. As used in this paragraph, a service organization is an organization usually composed of ex-servicemen, which presents claims from veterans and their dependents for benefits under laws administered by the Veterans Administration.

(f) An employee who engages in any outside work while on sick leave is required to report that fact to his or her supervisor.

(g) An employee shall not hold membership in any subversive organization

or in a political party which advocates the overthrow of the Government by force or violence.

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 3173, Feb. 20, 1968; 33 FR 14780, Oct. 3, 1968; 42 FR 2314, Jan. 11, 1977]

§ 0.735–13 Financial interests.

(a) An employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her Government duties and responsibilities.

(b) An employee shall not engage directly or indirectly, in a financial transaction as a result of, or primarily relying on, information obtained through his or her Government employment.

(c) An employee called upon to participate in his official capacity in any matter in which he, his spouse, minor child, outside business associate, or person with whom he or she is negotiating for employment, has a financial interest, should disqualify himself or herself or make full disclosure of the financial interest to the appointing officer (appropriate personnel officer). The employee should take no further action pending receipt of a written determination that no conflict exists.

(d) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by Executive Order 11222, law, or this part.

[33 FR 3173, Feb. 20, 1968, as amended at 42 FR 2315, Jan. 11, 1977]

§ 0.735–14 Use of Government property.

The governing regulations on the use of Government property are located in the Federal Property Management Regulations (41 CFR Ch. 101). These are implemented in VA Manual MP–2, "Personal Property". The following restrictions are broadly applicable to employees:

(a) Each employee shall protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her.

(1) An employee shall not wilfully damage or otherwise misuse Federal Government property, including vehicles, equipment, tools and instruments.

(2) An employee shall not deface Federal Government buildings, offices, premises or facilities.

(b) An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities.

(c) An employee shall not place personally owned property in official use without prior approval.

(d) Supervisors and administrative officers are responsible for the proper care, handling and use of Government property under their jurisdiction, and may be held financially liable.

[31 FR 5828, Apr. 15, 1966, as amended at 42 FR 2315, Jan. 11, 1977]

§ 0.735–15 Disclosure or misuse of information.

(a) An employee shall not, except as provided in § 0.735–12(c), directly or indirectly use for the purpose of furthering a private interest, or allow such use of, official information obtained through or in connection with his or her Government employment which has not been made available to the general public.

(b) An employee shall not, except as specifically authorized, disclose any official information which represents a matter of confidence or trust or any other official information of such character that its disclosure or use would be contrary to the best interest of the Government, the Veterans Administration, or the veterans being served by the Veterans Administration.

[31 FR 5828, Apr. 15, 1966, as amended at 42 FR 2315, Jan. 11, 1977]

§ 0.735–16 Indebtedness.

(a) An employee shall pay each just financial obligation in a proper and timely manner (E.O. 11222, May 8, 1965, and 5 CFR Part 735).

(1) For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or re-

duced to judgment by a court or imposed by law such as Federal, State, or local taxes, and "in a proper and timely manner" means in a manner which the Veterans Administration determines does not, under the circumstances, reflect adversely on the Government as his or her employer.

(2) First priority will be given to financial obligations imposed by law such as Federal, State, or local taxes, and second to family support judgments.

(3) Indebtedness information will be treated as confidential.

(b) The Veterans Administration will not assume responsibilities which properly belong to private creditors for investigating credit status, settling disputes over bills, and collecting amounts owed.

(c) The Veterans Administration will, after an alleged creditor has made attempts to collect directly from an employee, insist that the employee promptly make and carry out an arrangement with the creditor to pay an indebtedness he admits or which he owes according to a court judgment he is not legally contesting, or promptly make his views known to the alleged creditor if he disputes an indebtedness claim.

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 3173, Feb. 20, 1968; 42 FR 2315, Jan. 11, 1977]

§ 0.735–17 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the government, in any gambling activity including the operation of a gambling device; in conducting a lottery or pool; in a game for money or property; in selling or purchasing a numbers slip or ticket; or in promoting betting or acting as an agent for gamblers.

§ 0.735–18 Conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct unbecoming a Federal employee or prejudicial to the Government.

§ 0.735–19 Relations with firms or persons seeking or doing business with the Veterans Administration.

(a) Full-time employees are generally prohibited from performing service for a contractor or other person engaged in contract or maintenance work or other business with the Veterans Administration. Written exceptions to this provision may be made by the station, department, or staff office head concerned, if in his judgment the performance of such service will not involve a conflict of interest.

(b) All employees, and particularly those responsible for making or recommending awards of Government contracts (or with administering, directing, or passing upon the performance of such contracts), are expected in the conduct of their personal business as well as their official duties to show no favoritism or prejudice to any persons having or seeking business with the Veterans Administration; to avoid giving any reason for suspicion that such favoritism or prejudice exists; and to refrain from any act which might reasonably be expected to embarrass or discredit the Veterans Administration.

§ 0.735–20 Other conduct on the job.

(a) *Attendance.* (1) Employees are required to be punctual in reporting for duty, and to stay on the job unless excused.

(2) Supervisors are responsible for controlling attendance of their employees, authorizing absences, and dealing promptly with abuses.

(3) Unit timekeepers are responsible for keeping the time and attendance records based on supervisors' authorizations of absence, and for obtaining the employees' initials and the supervisor's signature certifying to the accuracy of the entries on the time and attendance records.

(b) *Work attitudes and work behavior.* An employee shall live up to common standards of acceptable work behavior. The following are considered improper: Willful idleness or timewasting; inattentiveness to duty, inalertness or sleeping during working hours; careless or negligent workmanship; deliberate failure or unreason-

able delay in carrying out instructions; threatening, attempting or inflicting bodily injury to another; fighting or dangerous horseplay; disrespectful conduct; use of insulting, abusive, or obscene language to or about other personnel, patients, or beneficiaries; making false or unfounded statements about other employees which are slanderous or defamatory; deliberate or willful resistance toward or refusal to carry out the proper order of a superior.

(c) *Avoiding favoritism.* In conducting official business, employees must show no favoritism or prejudice to those served by the Veterans Administration, and must disqualify themselves where personal interests might affect their impartiality.

(d) *Dealing with the public.* Employees should be courteous, considerate, efficient and prompt in serving the general public, veterans and their families.

(e) *Relationship with beneficiaries and claimants.* Employees are expected to be helpful to beneficiaries, patients and claimants, but:

(1) An employee shall not counsel or advise veterans or their dependents in matters outside his official duties, but will refer them to the appropriate designated officials;

(2) An employee shall not enter into any personal financial transactions, including purchases, sales, or the borrowing or lending of money, with patients or their friends or relatives acting for them;

(3) An employee shall not, except in his regular duties, aid beneficiaries, or claimants in the negotiation of checks or the handling of personal funds, other than by identifying them or witnessing their X signature;

(4) An employee shall not procure intoxicants or drugs for, or attempt to sell intoxicants or drugs to, patients or members, or give or attempt to give intoxicants or drugs to them unless officially prescribed for medicinal use;

(5) An employee shall not abuse patients, members, or other beneficiaries, whether or not provoked.

(f) *Borrowing and lending money.* (1) An employee shall not, while on duty or while on Federal premises, borrow money from, or lend money to another employee or other person for monetary profit or other gain, except as part of the operation of a recognized credit union or employee welfare plan.

(2) A supervisor may not loan money to, or request or accept the loan of money from, subordinate employees.

(g) *Use of military titles.* An employee shall not use his military title or rank in official publications, correspondence, telephone directories, desk name plates, door signs, or the like, unless he is in active status in the military detailed to the Veterans Administration.

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 3173, Feb. 20, 1968]

§ 0.735–21 Standards of conduct in special areas.

(a) *Solicitations and sales.* (1) An employee shall not solicit contributions for, or otherwise promote on premises occupied by the Veterans Administration, any national or local welfare or other type of campaign except one endorsed by the Veterans Administration.

(2) An employee shall not sell tickets, stocks, articles, commodities, or services on premises occupied by the Veterans Administration, except for officially acceptable activities of employee organizations, associations or groups.

(b) *Theft of personal property on Veterans Administration premises.* The theft by employees of the personal property of other employees, or of patients, claimants, or other persons having business with or visiting the Veterans Administration, will be subject to disciplinary action notwithstanding any legal action that may be taken.

(c) *Use or sale of intoxicants.* (1) An employee shall not use intoxicants in such manner that his work performance is adversely affected or his conduct becomes embarrassing to the Veterans Administration.

(2) An employee shall not report for duty under the influence of intoxicants, or become intoxicated or partake of intoxicants while on duty.

(3) An employee shall not sell or attempt to sell intoxicants on premises

occupied by the Veterans Administration.

(d) *Exercise of notary powers.* (1) Employees who are notaries public may perform notarial acts on non-Veterans Administration matters where it will not interfere with their regular duties.

(2) An employee who is a notary public shall not charge or receive any compensation for performing any notarial act during his working hours or luncheon period (E.O. 977, Nov. 1908).

(e) *Safety.* (1) Employees will observe safety instructions, signs, and normal safety practices and precautions, including the use of protective clothing and equipment.

(2) An employee shall report each work-connected injury, accident or disease he suffers.

(f) *Furnishing testimony.* Employees will furnish information and testify freely and honestly in cases respecting employment and disciplinary matters. Refusal to testify, concealment of material facts, or willfully inaccurate testimony in connection with an investigation or hearing may be ground for disciplinary action. An employee, however, will not be required to give testimony against himself in any matter in which there is indication that he may be or is involved in a violation of law wherein there is a possibility of self-incrimination.

(g) *Leave and absence from duty.* (1) Employees are expected to use the various kinds of leave and authorized absence in accordance with the purposes for which they were established, and without falsification of reasons for absence.

(2) Employees must obtain from the supervisor for each absence from duty, approval in advance, or in case of emergency or illness, approval as early as practicable, and to the extent possible, at the beginning of their tour of duty but not later than 2 hours thereafter.

(h) *Purchase of Veterans Administration property.* Employees of the Veterans Administration and members of their immediate families may purchase Government-owned personal property when such property is sold by the General Services Administration or any other Federal agency. In the cases of manual arts and occupational therapy products, employees may purchase such material when sold by the Veterans Administration.

(i) *Use of name and official title or designation.* Employees shall not use or lend their name and official title or designation (relationship to the Veterans Administration) in connection with any commercial enterprise or to endorse any commercial product, or in any other way that might appear to the public to be intended to further the business interests of the recipient. Employees may, however, use their official relationship as identification in publications they author, provided the views expressed are not made to appear as those of the agency unless so authorized.

(j) *Use of Government Facilities, materials and personnel.* Employees may not, except as specifically authorized, use Government facilities, materials and personnel for other than official purposes.

(k) *Use of motor vehicle.* Employees may not operate a federally-owned motor vehicle or another they are using on Government business, improperly, recklessly, or in violation of traffic regulations; and on Veterans Administration occupied premises, may not so operate any motor vehicle.

(l) *Civil Service requirements.* Employees may not violate the requirements of Civil Service law, rules, regulations, policies and standards administered by or subject to the jurisdiction of the Civil Service Commission (5 CFR 5.4).

(m) *Conduct of employees in foreign countries.* (1) Veterans Administration employees serving in or traveling on official business in foreign countries must conduct themselves in a manner which does not offend the people of those countries.

(2) Station heads concerned will issue instructions as necessary to explain proper conduct, supplementing as appropriate controlling instructions of the local diplomatic mission of the State Department.

(n) *Distributing advertising and unofficial literature.* An employee will not distribute literature or advertising matter on premises occupied by the Veterans Administration except when

authorized by Veterans Administration management.

(o) *Reporting serious irregularities and criminal acts.* Employees are responsible for reporting to department, staff office, or field station heads (or directly to the Administrator, if they think their interests would otherwise be endangered) any evidence or information that gives them reasonable cause to suspect that a serious irregularity or criminal act, such as abuse of a patient, or fraud, or theft or other criminal violation may have occurred in an activity of the Veterans Administration. Violations of personnel laws or rules may be reported directly to the Director, Investigation and Security Service when the matter is not appropriate for the grievance or appeals procedure. Employees who furnish such evidence as information to any of the above officials on the basis of reasonable grounds shall not be penalized in any way for doing so. They will also be assured that appropriate inquiry will be made.

(p) *Insuring citizen privacy.* An employee may not collect or maintain information about any citizen (including where applicable, employees, applicants, patients, etc.) dealing with the Veterans Administration unless such information is relevant and necessary to the official purpose for which it was collected. No information which has been collected concerning a citizen may be disseminated except in the performance of official duty.

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 3173, Feb. 20, 1968; 33 FR 18375, Dec. 11, 1968; 40 FR 46286, Oct. 6, 1975]

§ 0.735–22 Other conflict of interest restrictions.

Under Public Law 87–849 (18 U.S.C. 201–218), employees are subject to the following additional conflict of interest restrictions:

(a) Employees are prohibited, except in the discharge of their official duties, from representing anyone before a court or Government agency in a matter in which the United States is a party or has an interest, whether or not they are paid for such representation (18 U.S.C. 203 and 205). This does not preclude:

(1) Representing another employee, without compensation, who is the subject of disciplinary, loyalty, or other personnel administration proceedings, provided such representation is not inconsistent with the faithful performance of duties;

(2) Giving testimony under oath or making statements required to be made under penalty for perjury or contempt;

(3) Representing with or without compensation a parent, spouse, child, or person or estate to whom employees serve as fiduciary, with the approval of the official responsible for appointments of their position, and if the matter involved is neither one participated in personally or substantially nor one under the employees' responsibility.

(b) Employees are prohibited from participating in the course of their official duties in any matter in which they, their spouse, minor child, or any person or organization with whom they have an official business connection or are negotiating for employment, has a financial interest, unless they make full disclosure in advance and obtain written determination in accordance with 18 U.S.C. 208 (b)(1).

(c) Employees are prohibited, when they leave Federal employment, from representing anyone other than the United States in connection with a matter connected with their former duties or official responsibilities in which the United States is a party or has an interest:

(1) Indefinitely if the matter was one in which they participated personally or substantially for the Federal Government (18 U.S.C. 207(a)); or

(2) For 1 year if the matter was merely within your official responsibility within the last year of your Federal service (18 U.S.C. 207(b)).

[40 FR 46287, Oct. 6, 1975]

§ 0.735–23 Miscellaneous statutory provisions.

Employees shall acquaint themselves with each statute that relates to their ethical and other conduct as an employee of the Veterans Administration and of the Government, as follows:

(a) *Statutory provisions pertaining to the Veterans Administration.* The requirement that officers or employees of the Veterans Administration be dismissed for owning any interest in, or receiving any wages, salary, dividends, profits, gratuities or services from, any educational institution operated for profit, in which an eligible person or veteran is pursuing a course of education under 38 U.S.C. chs. 34, 35, or 36, unless waiver is obtained from the Administrator after a hearing (38 U.S.C. 1783).

(b) *Statutory provisions pertaining to the Government generally.* (1) House Concurrent Resolution 175, 85th Congress, 2d session, 72 Stat. B12, the "Code of Ethics for Government Service."

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(3) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(4) The prohibition against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

(5) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(6) The prohibition against:

(i) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and

(ii) The disclosure of confidential information (18 U.S.C. 1905).

(7) The provision against appointment or retention of persons who habitually use intoxicating beverages to excess (5 U.S.C. 7352).

(8) The prohibition against the misuse of a Government vehicle, such as for unofficial purposes (31 U.S.C. 638a(c)).

(9) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(10) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(11) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(12) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(13) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(14) The prohibitions against:

(i) Embezzlement of Government money or property (18 U.S.C. 641);

(ii) Failing to account for public money (18 U.S.C. 643); and

(iii) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(15) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(16) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(17) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 3174, Feb. 20, 1968; 33 FR 18375, Dec. 11, 1968; 40 FR 46287, Oct. 6, 1975]

Subpart C—Standards of Ethical Conduct and Related Responsibilities of Special Government Employees

§ 0.735–50 General requirements.

Each Veterans Administration special Government employee (see definition in § 0.735–2(b)) is subject to the same general requirements as other employees (§ 0.735–10).

§ 0.735–51 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 0.735–52 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his Government

employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) Section 0.735–12(c)(1) on the use of inside information in teaching, lecturing or writing is equally applicable to special Government employees.

§ 0.735–53 Coercion.

A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person (individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization or institution) to provide financial benefit to himself or another person, particularly one with whom he has family, business or financial ties.

§ 0.735–54 Gifts, entertainment, and favors.

Except as provided in § 0.735–11(b), a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person (individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization or institution) having business with the Veterans Administration, anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, business, or organization, particularly one with whom he has family, business, or financial ties.

§ 0.735–55 Other conflict of interest restrictions.

Under Public Law 87–849 (18 U.S.C. 201–218) special Government employees are subject to the following additional conflict of interest restrictions:

(a) A special Government employee is prohibited, except in the discharge of his official duties, from representing any other person before a court or Government agency, with or without compensation, in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest, but only if he has at any time participated in the matter personally and substantially in the course of his Government employment.

(b) A special Government employee may not, except in the discharge of his official duties, represent any other person, with or without compensation, in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he serves, if he has served over 60 days during the past 365, and whether or not he has ever participated in the matter personally and substantially.

(c) Restrictions in paragraphs (a) and (b) of this section do not preclude:

(1) Representation of another employee, without compensation, who is the subject of disciplinary, loyalty, or other personnel administration proceedings, provided such representation is not inconsistent with the faithful performance of his duties;

(2) Giving testimony under oath or making statements required to be made under penalty for perjury or contempt;

(3) Representing with or without compensation, a parent, spouse, child, or person or estate he serves as fiduciary, with the approval of the official responsible for appointments to the representatives position, if the matter involved is neither one participated in personally or substantially nor one under his official responsibility;

(4) Acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of the United States, provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires. (Such certification shall be submitted for publication in the FEDERAL REGISTER.)

(d) A special Government employee is prohibited from participating in the course of his official duties in any matter in which he, his spouse, minor child, or any person or organization with whom he has an official business

connection or is negotiating for employment, has a financial interest, unless:

(1) He makes full disclosure in advance and obtains written determination in accordance with 18 U.S.C. 208(b)(1).

(e) A special Government employee, when he leaves Federal employment, is prohibited from representing anyone other than the United States in connection with a matter in which the United States is a party or has an interest:

(1) Indefinitely if the matter was one in which he participated personally and substantially for the Federal Government (18 U.S.C. 207(a)) or,

(2) For 1 year if the matter was merely within his official responsibility within the last year of his Federal service (18 U.S.C. 207(b)).

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 3174, Feb. 20, 1968]

§ 0.735–56 Miscellaneous statutory provisions.

Each special Government employee shall acquaint himself with each statute that relates to his ethical and other conduct as a special Government employee of the Veterans Administration and of the Government. The statutory provisions listed in § 0.735–23 are applicable to special Government employees.

§ 0.735–57 Other standards of conduct.

A special Government employee is subject to any of the other requirements of §§ 0.735–11—0.735–23 not mentioned in this subpart, except where his duties or employment arrangements for the Veterans Administration are such that an individual regulation is not applicable.

[33 FR 18376, Dec. 11, 1968]

Subpart D—Statements of Employment and Financial Interests

§ 0.735–70 Purpose of statements of interests.

Statements of employment and financial interests are required from certain employees and special Government employees so that management may determine if conflicts of interest, or the appearance of conflicts of interest, exist between outside activities or interests and responsibilities to the Veterans Administration, and so that suitable remedial action can be taken.

§ 0.735–71 Employee's complaint on filing requirement.

An employee is entitled to a review through Veterans Administration grievance procedures of his complaint that his position has been improperly included in this part as one requiring the submission of a statement of employment and financial interests.

[33 FR 3174, Feb. 20, 1968]

§ 0.735–72 Form and content of statements.

(a) Statements of employment and financial interests required of employees and special Government employees shall contain the information required by the separate formats prescribed for each by the Civil Service Commission in the Federal Personnel Manual (Chapter 735, Appendix D).

(b) Deposits in savings and loan institutions and credit unions are not required to be reported in the financial statement.

[33 FR 3174, Feb. 20, 1968]

§ 0.735–73 Employees required to submit statements.

Except as indicated in § 0.735–74, statements of employment and financial interests are required under this part from the following employees:

(a) Employees paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code.

(b) Employees classified at GS–13 or above under Section 5332 of Title 5, United States Code, or at a comparable pay level under another authority, who are in positions identified in this part as positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprise; or

(4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(c) Employees classified at GS–13 or above under Section 5332 of Title 5, United States Code, or at a comparable pay level under another authority, who are in positions identified in this part as positions which the Veterans Administration has determined have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of law, Executive order, 5 CFR Part 735, and this part.

(d) Employees classified below GS–13 under Section 5332 of Title 5, United States Code, or at a comparable pay level under another authority, who are in positions which otherwise meet the criteria in paragraph (b) or (c) of this section when the inclusion of the positions in this part has been specifically justified by the Veterans Administration in writing to the Civil Service Commission as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflicts-of-interest situation.

(e) The following positions, which are classified at GS–13 or above except as otherwise indicated, are considered to meet the criteria of paragraph (a), (b), (c) or (d) of this section and have not been excluded under § 0.735–74; all appointees to these positions must file statements of employment and financial interests, except where an individual position in an included category may be exempted under § 0.735–74(a):

LIST OF POSITIONS REQUIRING FILING OF STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

Deputy Administrator.
Associate Deputy Administrator.
Assistant Deputy Administrator.
Chief Medical Director.
Chief Benefits Director.
General Counsel.
Chief Data Management Director.
Manager, Administrative Services.
Controller.
Assistant Administrator for Construction.
Chairman and Members, Contract Appeals Board.
Assistant Manager, Administrative Services, Central Office.
Director, Central Office Building and Supply Service.
Assistant Director, Central Office Building and Supply Service.
Director, Central Office Publications Service.
Assistant Director, Central Office Publications Service.
Deputy Assistant Administrator for Construction.
Director, Program Control and Analysis Staff (Construction).
Area Projects Directors (Construction).
Director of Architecture and Engineering.
Director of Planning and Development (Construction).
Chairman, Architect-Engineer Evaluation Board (Construction).
Utilities Contracting Officer.
Director, Research Staff (Construction).
All Service Directors in Office of Construction.
Resident Engineers (Construction) with authority to issue change orders, GS–11 and above.
Deputy Chief Data Management Director.
Director, Field Operations Service (DDM).
Chief, Equipment Planning and Evaluation Division (DDM).
Center Directors, Department of Data Management.
Deputy Chief Medical Director.
Executive Assistant to Deputy Chief Medical Director
Assistant Chief Medical Director for Policy and Planning
Associate Deputy Chief Medical Director for Operations
Deputy for Operations
Executive Assistant to Chief Medical Director
Director, Operations Review and Analysis Staff
Director, Resources Staff
Director, Regionalization and Sharing Staff
Director, Management Support and Facilities Staff
Director, Planning Service
Assistant Chief Medical Director for Extended Care
Director, Health Services Research and Development Service
Associate Directors, Health Services Research and Development Service
Deputy Assistant Chief Medical Director for Academic Affairs
Deputy Assistant Chief Medical Director for Extended Care
Assistant Chief Medical Director for Professional Services
Deputy Assistant Chief Medical Director for Clinical Services
Deputy Assistant Chief Medical Director for Clinical Support Services

Director, Dietetic Service
Director, Medical Service
Director, Nuclear Medicine Service
Director, Nursing Service
Director, Pathology Service
Director, Pharmacy Service
Director, Rehabilitation Medicine Service
Director, Mental Health and Behavioral Sciences Service
Deputy Director (Prosthetics Division), Surgical Service
Director, Radiology Service
Director, Surgical Service
Assistant Chief Medical Director for Administration
Director, Spinal Cord Injury Service
Director, Building Management Service
Director, Engineering Service
Director, Manpower Grants Service
Assistant Chief Medical Director for Academic Affairs
Assistant Chief Medical Director for Denistry
Assistant Chief Medical Director for Research and Development
Director, Veterans Canteen Service
Deputy Director, Veterans Canteen Service
Field Directors, Veterans Canteen Service
Supervisory Buyers, Merchandising Division, Veterans Canteen Service
Director, Supply Service
Supply Management Officers (Class Title) GS–13 and up
Supply Management Representatives (Class Title) GS–13 and up
Contract Specialists (Class Title) GS–13 and up
Chiefs, Supply Services, All Field Stations, GS–11 and above
Chiefs, Business Services Divisions, DM&S Field Stations, GS–10 and above
Directors of Field Stations, DM&S
Assistant Directors of Field Stations, DM&S
Chiefs of Staff, DM&S Field Stations
Deputy Chief Benefits Director
Director, Education and Rehabilitation Service
Director, Compensation and Pension Service
Director, Loan Guaranty Service
Deputy Director, Loan Guaranty Service
Field Directors, Area Field Offices
Directors, DVB Field Stations
Assistant Director for Insurance, VAC, Philadelphia
Assistant Directors, DVB Centers
Loan Guaranty Officers, Field Stations
Assistant Loan Guaranty Officers, Field Stations
Chiefs, Construction and Valuation Sections (Field Stations), GS–11 and above
Chiefs, Loan Processing Sections (Field Stations), GS–11 and above
Chiefs, Property Management Sections (Field Stations), GS–11 and above
Director, National Cemetery System
Executive Assistant to the Director, National Cemetery System.
Deputy Director, National Cemetery System.
Director, Headstone Service.
Director, Cemetery Service.
Chief, Contract and Special Audit Division (Planning and Evaluation).
Director, Contract Compliance Service.
Deputy Director, Contract Compliance Service.
Supervisory Equal Opportunity Specialists (Contract Compliance).
Equal Opportunity Specialists (Contract Compliance).

(f)(1) The list of positions in paragraph (e) of this section may be amended by the addition or deletion of positions when the Assistant Administrator for Personnel with the concurrence of the General Counsel determines such amendments are required under the criteria in paragraphs (a) through (d) of this section. The heads of departments, staff offices, and field stations shall notify the Assistant Administrator for Personnel, through channels, of any position that they consider should be included, deleted or exempted from the list in paragraph (e) of this section. Such notification shall explain the reason for the proposal (such as a change in duties or degree of supervision).

(2) Additions to, deletions from, and other amendments of the list of positions in paragraph (e) of this section are effective upon actual notification to the incumbents. The amendments to paragraph (e) of this section shall be submitted annually for publication in the FEDERAL REGISTER.

[33 FR 3174, Feb. 20, 1968, as amended at 35 FR 6003, Apr. 11, 1970; 40 FR 14068, Mar. 28, 1975; 42 FR 2315, Jan. 11, 1977]

§ 0.735–74 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in § 0.735–73(b) may be excluded from the reporting requirement when the Veterans Administration determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflicts-of-interest situation is remote; or

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not nec-

essary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(b) A statement of employment and financial interests is not required by 5 CFR Part 735 from an agency head, a Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in that office, or a full-time member of a committee, board, or commission appointed by the President. These persons are subject to separate reporting requirements under section 401 of Executive Order 11222.

[33 FR 3175, Feb. 20, 1968]

§ 0.735–75 Time and place for submission of employees' statements; reviewing officials.

An employee required to submit a statement of employment and financial interests under this part shall submit that statement to the Reviewing Official: Station head for field positions; department, staff office, or National Cemetery System head, as appropriate, for all other positions (including station heads); Administrator for the heads of departments, staff offices, and National Cemetery System, and all positions in the Office of the Administrator. The statement shall be submitted not later than:

(a) Ninety days after the effective date of this part if employed on or before that effective date; or

(b) Thirty days after his or her entrance on duty, but not earlier than 90 days after the effective date, if appointed after that effective date.

[31 FR 5828, Apr. 15, 1966, as amended at 40 FR 14069, Mar. 28, 1975; 42 FR 2316, Jan. 11, 1977]

§ 0.735–76 Supplementary statements.

(a) Employees required to submit a statement of employment and financial interests shall submit any changes or additions in a supplementary statement as of June 30 each year. If there are no changes or additions, a negative report is required for the purpose of annual review.

(b) Notwithstanding the filing of the annual supplementary report, each employee shall at all times avoid acquiring a financial interest that could result, or taking action that would result, in a violation of the conflicts-of-interest provisions of this part. When in doubt, the employee should obtain counsel through the interpretation and advisory service.

[33 FR 3175, Feb. 20, 1968]

§ 0.735–77 Interests of employees' relatives.

For the purposes of these statements of employment and financial interests, the interest of a spouse, minor child, or of other blood relations of the employee who are residents of the employee's household, is considered to be an interest of the employee.

§ 0.735–78 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his or her behalf.

[42 FR 2316, Jan. 11, 1977]

§ 0.735–79 Information not required.

An employee is not required to submit in a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and developmental or related work involving grants of money from or contracts with the Government are deemed "business enterprises," and an employee shall include them in his or her statement of employment and financial interests or supplementary statement.

[42 FR 2316, Jan. 11, 1977]

§ 0.735–80 Confidentiality of employees' statements.

Each statement of employment and financial interests and each supplementary statement shall be held in strictest confidence. The reviewing officials are responsible for maintaining this confidentiality and insuring that data therein are not used for any other purpose than to determine questions of conflict of interest. Information from a statement or supplement may not be disclosed to anyone other than the reviewing officials (heads of departments, staff offices, or field stations), the Personnel Officers concerned, the selecting official concerned, and the deputy counselor (legal) and Counselor, except as the Administrator or the Civil Service Commission may determine to be for good cause shown. The statements will be maintained under lock and key in the reviewing official's office.

[33 FR 3175, Feb. 20, 1968]

§ 0.735–81 Reviewing statements of interest.

(a) Whenever the reviewing official, with the aid of the deputy counselor, determines from the statement of employment and financial interests, supplement, or other information that there may be a conflict of interest or appearance of conflict of interest between the interest of an employee or special Government employee and the performance of his or her services for the Government, he or she shall disclose the existence of the possible conflict to the selecting official for the position involved.

(b) The employee or special Government employee shall be asked to explain the conflict or appearance of conflict.

(c) Where the reviewing official thereafter decides that no conflict-of-interest problem exists, the matter will be documented and considered settled. Where the reviewing official finds that such a problem does exist, he or she shall refer the information to the deputy counselor (legal) having jurisdiction.

(d) Where the deputy counselor (legal) decides that no conflict-of-interest problem exists, the matter will be documented and considered settled. Otherwise, he or she shall refer the information to the Administrator for final decision and remedial action, through the Counselor for the Veterans Administration, furnishing a copy to the department concerned.

[31 FR 5828, Apr. 15, 1966, as amended at 42 FR 2316, Jan. 11, 1977]

§ 0.735–82 Disciplinary and other remedial action.

When after consideration of all of the information, including the explanation of the employee or special Government employee, the Administrator decides that remedial action is required, he shall take immediate action to end the conflict or appearance of conflict of interest. Remedial action may include, but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee of his conflicting interest;

(c) Disciplinary action; or

(d) Disqualification for a particular assignment.

§ 0.735–83 Applicability to members of the uniformed services.

Where a member of the military (uniformed) services on detail to the Veterans Administration is assigned duties which could involve a conflict of interest with his outside employment or financial interests, he shall furnish a statement of those interests for review. Any conflict or possible conflict of interest revealed shall be resolved by discussion with his military superiors.

§ 0.735–84 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

§ 0.735–85 Statements of employment and financial interests for special Government employees.

(a) The sections in this subpart pertaining to statements of employment and financial interests which apply to special Government employees mention them specifically.

(b) Except as provided in paragraph (d) of this section, each special Government employee is required to submit a statement of employment and financial interests which reports:

(1) All other employment; and

(2) Those financial interests which the reviewing official determines are relevant in the light of the duties to be performed.

(c) Physicians, dentists, and allied medical specialists who are special Government employees and whose duties do not involve care and service to patients, but whose duties do involve functions of the kind included in § 0.735–73 (b), (c), or (d), are required to file statements of employment and financial interests.

(d) Special Government employees who are not consultants or experts (see definitions in this paragraph), and whose duties are of a nature and at such a level of responsibility that the submission of the statement is not necessary to protect the integrity of the Government, are exempted. (Consultant means an individual who serves as an adviser to an officer or instrumentality of the Government, giving his views or opinions on problems or questions presented to him by the agency, as distinguished from an officer or employee who carries out the agency's duties or responsibilities. Expert means a person with excellent qualifications and a high degree of attainment in a professional, scientific, technical, or other field, whose attainment is such that he is usually regarded as an authority or as a practitioner of unusual competence and skill by other individuals in the profession, occupation or activity. Chapter 304, Federal Personnel Manual.) Categories exempted are:

(1) Physicians, dentists and allied medical specialists whose services are procured to provide care and service to patients;

(2) Veterinarians whose services are procured to provide care and service to animals;

(3) Lecturers participating in educational activities.

(e) A statement of employment and financial interests required to be submitted under this section shall be submitted not later than the time of employment of the special Government employee (within 90 days of publication for those on duty who have not previously filed). It shall be submitted to the appropriate Reviewing Official (§ 0.735–75). The review should be completed prior to the performance of service by new special Government employees. Each special Government employee shall keep his statement current throughout his employment with the Veterans Administration by the submission of supplementary statements as his interests change.

[31 FR 5828, Apr. 15, 1966, as amended at 33 FR 3175, Feb. 20, 1968]

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VETERANS ADMINISTRATION SEAL AND INSIGNIA

§ 1.9 Reproduction of Veterans Administration seal and insignia.

The reproduction of the Veterans Administration seal for other than official purposes is prohibited. However, the Administrator or Deputy Administrator may authorize the manufacture, sale or possession of Veterans Administration insignia by any person or persons, provided such action will tend to advance the aims, purposes and mission of Veterans Administration.

(72 Stat. 1114; 38 U.S.C. 210)

[24 FR 10018, Dec. 11, 1959]

THE UNITED STATES FLAG FOR BURIAL PURPOSES

§ 1.10 Eligibility for and disposition of the United States flag for burial purposes.

(a) *Eligibility for burial flags*—(1) *Persons eligible.* (i) A veteran of any war, of Mexican border service, or of service after January 31, 1955, discharged or released from active duty under conditions other than dishonorable. (For the purpose of this section, the term "Mexican border service" means active military, naval, or air service during the period beginning on January 1, 1911, and ending on April 5, 1917, in Mexico, on the borders thereof, or in the waters adjacent thereto.)

(ii) A peacetime veteran discharged or released, before June 27, 1950, from the active military, naval, or air service, under conditions other than dishonorable, after serving at least one enlistment, or for a disability incurred or aggravated in line of duty.

(iii) Any person who has died while in military or naval service of the United States after May 27, 1941. This subdivision authorizes and requires the furnishing of a flag only where the military or naval service does not furnish a flag immediately. The only cases wherein a flag is not supplied immediately are those of persons whose remains are interred outside the continental limits of the United States, or whose remains are not recovered or are recovered and not identified.

(iv) Any person who served in the organized military forces of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President of the United States, dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who dies after separation from such service under conditions other than dishonorable, on or after April 25, 1951. (38 U.S.C. 107(a)).

(b) *Disposition of burial flags.* (1) When a flag is actually used to drape the casket of a deceased veteran, it must be delivered to the next of kin following interment. Where the flag is not claimed by the next of kin it may be given upon request to a close friend or associate of the deceased veteran. Such action will constitute final and conclusive determination of rights under this section. (38 U.S.C. 901.)

(2) The phrase "next of kin" for the purpose of disposing of the flag used for burial purposes is defined as follows, with preference to entitlement in the order listed:

(i) Widow or widower.

(ii) Children, according to age (minor child may be issued a flag on application signed by guardian).

(iii) Parents, including adoptive, stepparents, and foster parents.

(iv) Brothers or sisters, including brothers or sisters of the halfblood.

(v) Uncles or aunts.

(vi) Nephews or nieces.

(vii) Others—cousins, grandparents, etc. (but not in-laws).

(3) The phrase "close friend or associate" for the purpose of disposing of the burial flag means any person who because of his or her relationship with the deceased veteran arranged for the burial or assisted in the burial arrangements. In the absence of a person falling in either of these categories, any person who establishes by evidence that he or she was a close friend or associate of the veteran may be furnished the burial flag. Where more than one request for the burial flag is received and each is accompanied by satisfactory evidence of relationship or association, the head of the field station having jurisdiction of the burial flag quota will determine which applicant is the one most equitably entitled to the burial flag.

(72 Stat. 1114, 1169, as amended; 38 U.S.C. 210, 901)

[13 FR 6999, Nov. 27, 1948, as amended at 20 FR 8350, Nov. 8, 1955; 24 FR 10106, Dec. 15, 1959; 31 FR 4959, Mar. 26, 1966; 42 FR 27245, May 27, 1977]

Quarters for Veterans Administration Employees Overseas

§ 1.11 Quarters for Veterans Administration employees in Government-owned or rented buildings overseas.

Pursuant to the provisions of 5 U.S.C. 5912, a U.S. citizen employee of the Veterans Administration permanently stationed in a foreign country may be furnished, without cost to him, living quarters, including heat, fuel, and light, in a Government-owned or rented building. When in the interest of the service and when administratively feasible, an agreement may be entered into by the Chief Benefits Director or his designee with another Federal agency, which is authorized to furnish quarters, to provide such quarters for Veterans Administration employees under the provisions of 31 U.S.C. 686. Quarters provided will be in lieu of any living quarters allowance to which the employee may otherwise be entitled.

(72 Stat. 1114; 38 U.S.C. 210)

[33 FR 362, Jan. 10, 1968]

Public Participation

§ 1.12 Public participation in regulatory development.

It is the policy of the Veterans' Administration to afford the public general notice, published in the Federal Register, of proposed regulatory development, and an opportunity to participate in the regulatory development in accordance with the provisions of the Administrative Procedure Act (APA). All written comments received will be available for public inspection. Exceptions to the policy of permitting public participation in the regulatory development may be authorized by the Administrator or one of his Deputies if adequately justified and concurred in by the General Counsel. Such exceptions, unless public comment is required by statute, may be recommended when: (a) The proposed regulations consist of interpretative rules, general statements of policy, or rules of Veterans' Administration organization procedure or practice, or (b) when the Veterans' Administration for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. (5 U.S.C. 553).

(5 U.S.C. 553; 38 U.S.C. 210)

[37 FR 7157, Apr. 11, 1972]

Words and Statements Denoting Gender

§ 1.13 Statement of VA publications and communications in a manner that does not seem to preclude benefits for female veterans, dependents or beneficiaries.

Pursuant to 1 U.S.C. 1, in determining the meaning of any Act of Congress, unless the context indicates otherwise, words importing the masculine gender include the feminine as well. But in formulating any VA publication and in any communications (within

the agency or to beneficiaries or members of the public), words and statements denoting gender shall avoid any appearance of seeming to preclude benefits for female veterans, dependents, or beneficiaries. For example the use of more precise terms such as "his or her" or of "the veteran's" will avoid giving grounds for the misconceptions which may arise from the use of the term "his" when in fact both sexes are eligible for the benefits under discussion. Similar care will be exercised in the use of other words and phrases denoting gender.

(72 Stat. 1114; 38 U.S.C. 210)

[39 FR 12248, Apr. 4, 1974]

Security, Law Enforcement, and Standards of Conduct on Veterans Administration Property

Authority: 72 Stat. 114, 87 Stat. 75; 38 U.S.C. 210, 218.

Source: Sections 1.218, 1.219, and 1.220 appear at 38 FR 24364, Sept. 7, 1973, unless otherwise noted.

§ 1.218 Authority, applicability, and responsibility.

Pursuant to 38 U.S.C. 218, the following rules and regulations apply at all property under the charge and control of the Veterans Administration (and not under the charge and control of the General Services Administration) and to all persons entering in or on such property. The head of the facility is charged with the responsibility for the enforcement of these rules and regulations, and he shall cause these rules and regulations to be posted in a conspicuous place on the property.

(a) *Closing property to public.* The head of the facility, or his designee, shall establish visiting hours for the convenience of the public and shall establish specific hours for the transaction of business with the public. The property shall be closed to the public during other than the hours so established. In emergency situations, the property shall be closed to the public when reasonably necessary to ensure the orderly conduct of Government business. The decision to close a property during an emergency shall be made by the head of the facility or his designee. The head of the facility or his designee shall have authority to designate areas within a facility as closed to the public.

(b) *Recording presence.* Admission to property during periods when such property is closed to the public will be limited to persons authorized by the head of the facility or his designee. Such persons may be required to sign a register and/or display identification documents when requested to do so by the hospital police, or other authorized individual. No person, without authorization, shall enter upon or remain on such property while the property is closed. Failure to leave such premises by unauthorized persons shall constitute an offense under this paragraph.

(c) *Preservation of property.* The improper disposal of rubbish on property; the spitting on property; the creation of any hazard on property to persons or things; the throwing of articles of any kind from a building; the climbing upon the roof or any part of the building, without permission; or the willful destruction, damage, or removal of Government property or any part thereof, without authorization, is prohibited. The destruction, mutilation, defacement, injury, or removal of any monument, gravestone, or other structure within the limits of any national cemetery is prohibited.

(d) *Conformity with signs and emergency conditions.* The head of the facility, or his designee, shall have authority to post signs of a prohibitory and directory nature. Persons, in and on property, shall comply with such signs of a prohibitory or directory nature, and during emergencies, with the direction of police authorities and other authorized officials. Tampering with, destruction, marring, or removal of such posted signs is prohibited.

(e) *Disturbances.* Conduct on property which creates loud or unusual noise; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots; which otherwise impedes or disrupts the performance of official duties by Government employees; which prevents one from obtaining medical or other services provided on the property in a timely

manner; or the use of loud, abusive, or otherwise improper language; or unwarranted loitering, sleeping, or assembly is prohibited. In addition to measures designed to secure voluntary terminations of violations of this paragraph the head of the facility or his designee may cause the issuance of orders for persons who are creating a disturbance to depart the property. Failure to leave the premises when so ordered constitutes a further disturbance within the meaning of this rule, and the offender is subject to arrest and removal from the premises.

(f) *Gambling.* Participating in games for money or other personal property, or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on property is prohibited.

(g) *Alcoholic beverages and narcotics.* Operating a motor vehicle on property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines is prohibited. Entering property under the influence of any narcotic drug, hallucinogen, marijuana, barbiturate, amphetamine, or alcoholic beverage (unless prescribed by a physician) is prohibited. The use on property of any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine (unless prescribed by a physician) is prohibited. The introduction or possession of alcoholic beverages or any narcotic drug, hallucinogen, marijuana, barbiturate, and amphetamine on property is prohibited, except for liquor or drugs prescribed for use by medical authority for medical purposes. Provided such possession is consistent with the laws of the State in which a facility is located, liquor may be used and maintained in quarters assigned to employees as their normal abode, and away from the abode with the written consent of the head of the facility which specifies a special occasion for use and limits the area and period for the authorized use.

(h) *Soliciting, vending, and debt collection.* Soliciting alms and contributions commercial soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts in or on property is prohibited. This rule does not apply to (1) national or local drives for funds for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service" issued by the Civil Service Commission under Executive Order 10927 of March 18, 1961 (26 FR 2383; 3 CFR, 1959-1963 Comp.), (2) concessions or personal notices posted by employees on authorized bulletin boards, and (3) solicitation of labor organization membership or dues under Executive Order 11491 of October 29, 1969, as amended (3 CFR Ch. IV).

(i) *Distribution of handbills.* The distributing of materials such as pamphlets, handbills, and/or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere on property is prohibited, except as authorized by the head of the facility or his designee or when such distributions or displays are conducted as part of authorized Government activities.

(j) *Photographs for news, advertising, or commercial purposes.* Photographs for advertising or commercial purposes may be taken only with the written consent of the head of the facility or his designee. Photographs for news purposes may be taken at entrances, lobbies, foyers, or in other places designated by the head of the facility or his designee.

NOTE: For Veterans Administration policy with respect to photographing patients and activities on Veterans Administration property see MP-1, Part I, paragraph 410.08. Available at any Veterans Administration station.

(k) *Dogs and other animals.* Dogs and other animals, except seeing-eye dogs, shall not be brought upon property except as authorized by the head of the facility or his designee.

(l) *Vehicular and pedestrian traffic.* Drivers of all vehicles in or on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of police and all posted traffic signs. The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited; parking in unauthorized locations or in locations reserved for other persons

or contrary to the direction of posted signs is prohibited. Creating excessive noise on hospital or cemetery premises by muffler cut out, the excessive use of a horn, or other means is prohibited. Operation of a vehicle in a reckless or unsafe manner, drag racing, bumping, overriding curbs, or leaving the roadway is prohibited.

(m) *Weapons and explosives.* No person while on property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

(n) *Demonstrations.* (1) All visitors are expected to observe proper standards of decorum and decency while on Veterans Administration property. Toward this end, any service, ceremony, or demonstration, except as authorized by the head of the facility or his designee, is prohibited.

(2) For the purpose of the prohibition expressed in this paragraph, unauthorized demonstrations or services shall be defined as, but not limited to, picketing, or similar conduct on Veterans Administration property; any oration or similar conduct to assembled groups of people, unless the oration is part of an authorized service; the display of any placards, banners, or foreign flags on Veterans Administration property unless approved by the head of the facility or his designee; disorderly conduct such as fighting, threatening, violent, or tumultuous behavior, unreasonable noise or coarse utterance, gesture or display or the use of abusive language to any person present; and partisan activities which may be described as commentary or actions in support of, or in opposition to, or attempting to influence, any current policy of the Government of the United States, or any private group, association, or enterprise.

(o) *Key security.* The head of the facility or his designee, will determine which employees, by virtue of their duties, shall have access to keys or barrier-card keys which operate locks to rooms or areas on the property. The unauthorized possession, manufacture, and/or use of such keys or barrier cards is prohibited. The surreptitious opening or attempted opening of locks or card-operated barrier mechanisms is prohibited.

(p) *Sexual misconduct.* Any act of sexual gratification on Veterans Administration property involving two or more persons, who do not reside in quarters on the property, is prohibited. Acts of prostitution or solicitation for acts of prostitution on Veterans Administration property is prohibited. For the purposes of this paragraph, an act of prostitution is defined as the performance or the offer or agreement to perform any sexual act for money or payment.

§ 1.219 Offenses and penalties.

(a) *Penalty limitations.* Conduct in violation of the rules and regulations set forth in § 1.218 subjects an offender to arrest and removal from the premises. Whoever shall be found guilty of violating these rules and regulations while on any property under the charge and control of the Veterans Administration is subject to a fine as set forth in the schedule in paragraph (b) of this section or, if appropriate, the payment of fixed sum in lieu of appearance (forfeiture of collateral) as may be provided for in rules of the United States District Court. Violations of § 1.218 not included in the schedule of offenses and penalties subjects an offender to a fine of not more than $50, or imprisonment of not more than 30 days, or both.

(b) *Schedule of offenses and penalties.* An offender who violates any of the offenses listed in this paragraph may also be imprisoned for not more than 30 days.

(1) Improper disposal of rubbish on property	$40
(2) Spitting on property	5
(3) Throwing of articles from a building or the unauthorized climbing upon any part of a building	5
(4) Willful destruction, damage, or removal of Government property without authorization	50
(5) Defacement, destruction, mutilation or injury to, or removal, or disturbance of, gravemarker or headstone	50
(6) Failure to comply with signs of a directive and restrictive nature posted for safety purposes	10
(7) Tampering with, removal, marring, or destruction of posted signs	10
(8) Entry into areas posted as closed to the public or others (trespass)	10
(9) Unauthorized demonstration or service in a national cemetery or on other Veterans Administration property	50

(10) Creating a disturbance during a burial ceremony	25
(11) Disorderly conduct which creates loud, boisterous, and unusual noise, or which obstructs the normal use of entrances, exits, foyers, offices, corridors, elevators, and stairways, or which tends to impede or prevent the normal operation of a service or operation of the facility	25
(12) Failure to depart premises by unauthorized persons	5
(13) Unauthorized loitering, sleeping or assembly on property	5
(14) Gambling — participating in games of chance for monetary gain or personal property; the operation of gambling devices, a pool or lottery; or the taking or giving of bets	40
(15) Operation of a vehicle under the influence of alcoholic beverages or nonprescribed narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines	50
(16) Entering premises under the influence of alcoholic beverages or nonprescribed narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines	50
(17) Unauthorized use on property of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines	50
(18) Unauthorized introduction on Veterans Administration controlled property of alcoholic beverages or narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines or the unauthorized giving of same to a patient or beneficiary	50
(19) Unauthorized solicitation of alms and contributions on premises	5
(20) Commercial soliciting or vending, or the collection of private debts on property	5
(21) Distribution of pamphlets, handbills, and flyers	5
(22) Display of placards or posting of material on property	5
(23) Unauthorized photography on premises	10
(24) Failure to comply with traffic directions of hospital police	15
(25) Parking in spaces posted as reserved for physically disabled persons	25
(26) Parking in no-parking areas, lanes, or crosswalks so posted or marked by yellow borders or yellow stripes	10
(27) Parking in emergency vehicle spaces, areas and lanes bordered in red or posted as EMERGENCY VEHICLES ONLY or FIRE LANE, or parking within 15 feet of a fire hydrant	25
(28) Parking within an intersection or blocking a posted vehicle entrance or posted exit lane	10
(29) Parking in spaces posted as reserved or in excess of a posted time limit	5
(30) Failing to come to a complete stop at a STOP sign	20
(31) Failing to yield to a pedestrian in a marked and posted crosswalk	15
(32) Driving in the wrong direction on a posted one-way street	10
(33) Operation of a vehicle in a reckless or unsafe manner, drag racing, overriding curbs, or leaving the roadway	35
(34) Exceeding posted speed limits	20
(35) Creating excessive noise in a hospital or cemetery zone by muffler cut out, excessive use of a horn, or other means	5
(36) Failure to yield right of way to other vehicles	15
(37) Possession of firearms, carried either openly or concealed, whether loaded or unloaded (except by Federal or State law enforcement officers on official business)	50
(38) Introduction or possession of explosives, or explosive devices which fire a projectile, ammunition, or combustibles	50
(39) Knives which exceed a blade length of 3 inches: switchblade knives; any of the variety of hatchets, clubs, and hand-held weapons; and brass knuckles	25
(40) The unauthorized possession of any of the variety of incapacitating liquid or gas-emitting weapons	25
(41) Unauthorized possession, manufacture, or use of keys or barrier card-type keys to rooms or areas on the property	35
(42) The surreptitious opening, or attempted opening, of locks or card-operated barrier mechanisms on property	50
(43) Soliciting for, or the act of, prostitution	50
(44) Any unlawful sexual activity	40

§ 1.220 Enforcement and other laws.

(a) Facility Veterans Administration police and investigators found qualified and duly appointed by heads of facilities to act as special investigators for the purposes of 38 U.S.C. 218(a)(3), will enforce §§ 1.218 and 1.219 and other Federal laws on Veterans Administration property in accordance with operating procedures issued by respective Veterans Administration Department Directors and under the direction of the head of the facility.

(b) Nothing contained in Veterans Administration rules and regulations set forth in §§ 1.218 and 1.219 shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to the area in which the Veterans Administration property is situated.

INVESTIGATION

AUTHORITY: Sections 1.450 to 1.455 issued under 72 Stat. 1114; 38 U.S.C. 210.

SOURCE: Sections 1.450 to 1.455 appear at 21 FR 10374, Dec. 28, 1956, unless otherwise noted.

§ 1.450 Jurisdiction and responsibility for investigation.

The Investigation Service of Central Office will have jurisdiction and be responsible for the making of administrative and other investigations, surveys and special studies at all levels and in all activities of the Veterans Administration, as well as of those organizations, associations, or individuals having official dealings or relationships with the Veterans Adminis-

tration, as set forth in and authorized by §§ 1.451 and 1.452.

§ 1.451 Functions of Investigation Service.

In performing its functions the Investigation Service will be guided by the following: There will be assigned in Central Office an adequate number of special investigators, who will conduct under the direction and supervision of the Director, Investigation Service, properly authorized investigations and perform other related duties arising therefrom or ancillary thereto. Administrative investigations will be accomplished when the occasion demands and where it is necessary to develop the evidence on a given subject through the taking of testimony and procurement of documentary evidence in connection with alleged irregularities, maladministration involving violation of Federal statutes, Veterans Administration regulations, instructions, or policies. Surveys and special studies may be conducted when the occasion arises.

§ 1.452 Authorizations for investigations, surveys and special studies.

(a) *Central Office.* The Administrator or his designee may authorize investigations, surveys and special studies of any nature involving Central Office, district offices, regional offices, VA offices, hospitals, centers, forms and supply depots, or any activity of the Veterans Administration concerning the following:

(1) Matters involving internal administration and functioning of any office or activity.

(2) Matters involving conduct of an officer or employee of the Veterans Administration.

(3) Matters involving cooperating agencies, organizations, associations, or individuals having official dealings or relationships with the Veterans Administration.

(4) Such matters involving alleged irregularities, maladministration, violation of Federal statutes, Veterans Administration regulations, instructions, and policies, and attempts to defraud the Government by any person within or without the Veterans Administration.

(5) Cases of claimants involving administrative irregularities or the conduct of an officer or employee of the Veterans Administration incident thereto.

(6) Cases of claimants which are of a nature sufficiently serious or complex and could not otherwise be satisfactorily investigated.

(7) Such other matters as in the judgment of the Administrator or his designee require investigation, survey or special study.

(b) *Board of Veterans Appeal cases.* Investigations of matters before the Board of Veterans Appeals may be approved by the Chairman, Board of Veterans Appeals under authority delegated to him by the Administrator.

(c) *Field stations.* Managers of district offices, regional offices, hospitals and centers, depots, or other offices shall have authority to order or approve investigations on matters involving complaints and infractions of Veterans Administration regulations or law subject to the following: loss or theft of funds or personal property, etc.; assaults upon, injuries to, and elopement of beneficiaries; and field examinations conducted by representatives from the office of the Chief Attorney, in accordance with the provisions of §§ 13.50 to 13.54 of this chapter. On serious matters and those set forth in paragraphs (a)(1) through (7) of this section, a preliminary report will be forwarded for consideration of the Director, Investigation Service, with appropriate comment and recommendation. In any instance where the situation is of such gravity or so far-reaching that Central Office assistance or guidance is needed, or in matters of emergent character involving potential adverse publicity and matters involving public policy or widespread public interest, the Administrator will be immediately informed by the most rapid means of communication with an outline of the full facts and recommendations of the field station official.

§ 1.453 Cooperation of all officials on investigation.

Managers, as well as other officials and employees of district offices, re-

gional offices, hospitals and centers, depots, or other offices will at all times render every assistance and cooperation to special investigators of Central Office. This cooperation will include the temporary transfer of any claims, insurance, clinical, correspondence, or other records. Such stenographic and other necessary services as may be requested at such times and points as desired will be furnished by Managers and other comparable officials without regard for territorial limitations. This section will be cited as the authority for such action. Travel orders issued under this authority will be charged against station allotments.

§ 1.454 Unauthorized disclosure of investigative information.

All testimony given in an investigation conducted by the Investigation Service and the report of investigation and its contents are for the use of the Administrator and his staff only and will not be disclosed to unauthorized persons within or without the Veterans Administration. Under no circumstances should reports of investigation or their contents be forwarded or disclosed to field stations, Managers, or other officials within or without the Veterans Administration, without clearance through and authorization by either the Administrator, Deputy Administrator, Assistant Administrator for Appraisal and Security, or the Director, Investigation Service, except those reports referred to the office of the General Counsel or the Chief Attorney for purposes of criminal prosecution or litigation, or reports of investigation authorized by the Chairman, Board of Veterans Appeals. In order that investigations may not interrupt the normal functions of a station, all employees are instructed to refrain from discussing matters under investigation either during the investigation or after its completion. Particularly those employees called upon to testify will refrain from discussing their testimony except with the investigator.

§ 1.455 Witnesses required to read and sign transcript.

In all instances where verbatim testimony is taken and transcribed, the witness will be afforded an opportunity to read and sign the transcription, unless it is not feasible to do so, and in such cases a statement of the reason for the witness failing to sign will be appended to the transcription, together with certification by the stenographer that it is a true and accurate transcription of the notes; or when, under unusual circumstances, sound recording equipment is used and it is impracticable for the investigator to await the return of transcribed testimony, in which event certification will be made by the special investigator as to the circumstances.

Release of Information From Veterans Administration Claimant Records

NOTE: Sections 1.500 through 1.527 concern the availability and release of information from files, records, reports, and other papers and documents in Veterans Administration custody pertaining to claims under any of the laws administered by the Veterans Administration. As to the release of information from Veterans Administration records other than claimant records, see §§ 1.550 through 1.558. Sections 1.500 through 1.526 implement the provisions of 38 U.S.C. 3301, 3302.

[32 FR 10848, July 25, 1967]

AUTHORITY: Sections 1.500 to 1.527 issued under 72 Stat. 1114, 1236, as amended; 38 U.S.C. 210, 3301.

§ 1.500 General.

(a) Files, records, reports, and other papers and documents pertaining to any claim filed with the Veterans Administration, whether pending or adjudicated, and the names and addresses of present or former personnel of the armed services, and their dependents, in the possession of the Veterans Administration, will be deemed confidential and privileged, and no disclosure therefrom will be made except in the circumstances and under the conditions set forth in §§ 1.501 through 1.526.

(b) A claimant may not have access to or custody of official Veterans Administration records concerning him-

self nor may a claimant inspect records concerning himself. Disclosure of information from Veterans Administration records to a claimant or his duly authorized agent or representative may be made, however, under the provisions of §§ 1.501 through 1.526.

(c) Each department, staff office, and field station head will designate an employee(s) who will be responsible for initial action on (granting or denying) requests to inspect or obtain information from or copies of records under their jurisdiction and within the purview of §§ 1.501 through 1.526 unless the regulations in this part currently contain such designations. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Director or Veterans Assistance Officer in the nearest VA regional office, or to the VA Central Office, 810 Vermont Avenue NW., Washington, D.C. 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m., Monday through Friday, for VA Central Office and most field stations. Any legal question arising in a field station concerning the release of information will be referred to the appropriate Chief Attorney for disposition as contemplated by § 13.401 of this chapter. In central office such legal questions will be referred to the General Counsel. Any administrative question will be referred through administrative channels to the appropriate department or staff office head.

(d) Upon denial of a request under paragraph (c) of this section, the responsible Veterans Administration official or designated employee will inform the requester in writing of the denial and advise him that he may appeal the denial. The requester will also be furnished the title and address of the Veterans Administration official to whom the appeal should be addressed. (See § 1.527.) In each instance of denial of a request, the denial will be made a matter of record and the record will contain a citation to the specific provision of Veterans Administration regulations upon which the denial is based.

[24 FR 8174, Oct. 8, 1959, as amended at 32 FR 10848, July 25, 1967; 38 FR 15601, June 14, 1973]

§ 1.501 Release of information by the Administrator.

The Administrator of Veterans Affairs or the Deputy Administrator may release information, statistics, or reports to individuals or organizations when in his judgment such release would serve a useful purpose.

[32 FR 10848, July 25, 1967]

§ 1.502 Disclosure of the amount of monetary benefits.

The monthly rate of pension, compensation, dependency and indemnity compensation, retirement pay, subsistence allowance, or educational assistance allowance of any beneficiary shall be made known to any person who applies for such information.

[32 FR 10848, July 25, 1967]

§ 1.503 Disclosure of information to a veteran or his duly authorized representative as to matters concerning the veteran alone.

Information may be disclosed to a veteran or his duly authorized representative as to matters concerning himself alone when such disclosure would not be injurious to the physical or mental health of the veteran. If the veteran be deceased, matters concerning him may be disclosed to his widow, children, or next of kin if such disclosure will not be injurious to the physical or mental health of the person in whose behalf information is sought or cause repugnance or resentment toward the decedent.

[13 FR 6999, Nov. 27, 1948]

§ 1.504 Disclosure of information to a widow, child, or other claimant.

Information may be disclosed to a widow, widower, child, or other dependent parent or other claimant, or the duly authorized representative of any of these persons as to matters concerning such person alone when such disclosure will not be injurious to the physical or mental health of the person to whom the inquiry relates. If the person concerning whom the in-

formation is sought is deceased, matters concerning such person may be disclosed to the next of kin if the disclosures will not be injurious to the physical or mental health of the person in whose behalf the information is sought or cause repugnance or resentment toward the decedent.

[13 FR 6999, Nov. 27, 1948]

§ 1.505 Genealogy.

Information of a genealogical nature when its disclosure will not be detrimental to the memory of the veteran and not prejudicial, so far as may be apparent, to the interests of any living person or to the interests of the Government may be released by the Veterans Administration or in the case of inactive records may be released by the Archivist of the United States if in his custody.

[13 FR 6999, Nov. 27, 1948]

§ 1.506 Disclosure of records to Federal Government departments, State unemployment compensation agencies and the Office of Servicemen's Group Life Insurance.

(a) All records or documents required for official purposes by any department or other agency of the U.S. Government or any State unemployment compensation agency acting in an official capacity for the Veterans Administration shall be furnished in response to an official request, written, or oral, from such department or agency. If the requesting department or agency does not indicate the purpose for which the records or documents are requested and there is doubt as to whether they are to be used for official purposes, the requesting department or agency will be asked to specify the purpose for which they are to be used.

(b) The Chief Benefits Director, Director of Insurance Service, or designee of either in Central Office, is authorized to release information to OSGLI (Office of Servicemen's Group Life Insurance) for the purpose of aiding in the settlement of a particular insurance case.

[33 FR 2994, Feb. 15, 1968]

§ 1.507 Disclosures to Members of Congress.

Members of Congress shall be furnished in their official capacity in any case such information contained in the Veterans Administration files as may be requested for official use. However, in any unusual case, the request will be presented to the Administrator, Deputy Administrator, or staff or department head for personal action. When the requested information is of a type which may not be furnished a claimant, the Member of Congress shall be advised that the information is furnished to him confidentially in his official capacity and should be so treated by him. (See 38 U.S.C. 3301.) Information concerning the beneficiary designation of a United States Government Life Insurance or National Service Life Insurance policy is deemed confidential and privileged and during the insured's lifetime shall not be disclosed to anyone other than the insured or his duly appointed fiduciary unless the insured or the fiduciary authorizes the release of such information.

[32 FR 10848, July 25, 1967]

§ 1.508 Disclosure in cases where claimants are charged with or convicted of criminal offenses.

(a) Where incompetent claimants are charged with, or convicted of, offenses other than those growing out of their relationship with the Veterans Administration and in which it is desired to disclose information from the files and records of the Veterans Administration, the Chief Attorney, Chief Benefits Director, Department of Veterans Benefits, or the General Counsel if he deems it necessary and proper, may disclose to the court having jurisdiction so much of the information from the files and records of the Veterans Administration relating to the mental condition of such beneficiaries, the same to be available as evidence, as may be necessary to show the mental condition of the accused and the time of its onset. This provision, however, does not alter the general procedure for handling offenses growing out of relations with the Veterans Administration.

(b) When desired by a U.S. district court, the Chief Attorney or the General Counsel may supply information as to whether any person charged with crime served in the military or naval service of the United States and whether the Veterans Administration has a file on such person. If the file is desired either by the court or by the prosecution or defense, it may be produced only in accord with §§ 1.501 through 1.526.

[21 FR 10375, Dec. 28, 1956, as amended at 32 FR 10848, July 25, 1967]

§ 1.509 Disclosure to courts in proceedings in the nature of an inquest.

The Chief Benefits Director, Department of Veterans Benefits, Chief Attorneys, and station heads are authorized to make disclosures to courts of competent jurisdiction of such files, records, reports, and other documents as are necessary and proper evidence in proceedings in the nature of an inquest into the mental competency of claimants and other proceedings incident to the appointment and discharge of guardians, curators, or conservators to any court having jurisdiction of such fiduciaries in all matters of appointment, discharge, or accounting in such courts.

[32 FR 10848, July 25, 1967]

§ 1.510 Disclosure to insurance companies cooperating with the Department of Justice in the defense of insurance suits against the United States.

Copies of records from the files of the Veterans Administration will, in the event of litigation involving commercial insurance policies issued by an insurance company cooperating with the Department of Justice in defense of insurance suits against the United States, be furnished to such companies without charge, provided the claimant or his duly authorized representative has authorized the release of the information contained in such records. If the release of information is not authorized in writing by the claimant or his duly authorized representative, information contained in the files may be furnished to such company if to withhold same would tend to permit the accomplishment of a fraud or miscarriage of justice. However, before such information may be released without the consent of the claimant, the request therefor must be accompanied by an affidavit of the representative of the insurance company, setting forth that litigation is pending, the character of the suit, and the purpose for which the information desired is to be used. If such information is to be used adversely to the claimant, the affidavit must set forth facts from which it may be determined by the General Counsel or Chief Attorney whether the furnishing of the information is necessary to prevent the perpetration of a fraud or other injustice. The averments contained in such affidavit should be considered in connection with the facts shown by the claimant's file, and, if such consideration shows the disclosure of the record is necessary and proper to prevent a fraud or other injustice, information as to the contents thereof may be furnished to the insurance company or copies of the records may be furnished to the court, workmen's compensation, or similar board in which the litigation is pending upon receipt of a subpoena duces tecum addressed to the Administrator of Veterans Affairs, or the head of the office in which the records desired are located. In the event the subpoena requires the production of the file, as distinguished from the copies of the records, no expense to the Veterans Administration may be involved in complying therewith, and arrangements must be made with the representative of the insurance company causing the issuance of the subpoena to insure submission of the file to the court without expense to the Veterans Administration.

[32 FR 10848, July 25, 1967]

§ 1.511 Judicial proceedings generally.

(a)(1) Where a suit has been threatened or instituted against the Government, or a prosecution against a claimant has been instituted or is being contemplated, the request of the claimant or his duly authorized representative for information, documents, reports, etc., shall be acted upon by the General Counsel in central office, or the Chief Attorney in the field station,

who shall determine the action to be taken with respect thereto. Where the files have been sent to the Department of Justice in connection with any such suit, the request will be referred to the Department of Justice, Washington, D.C., through the office of the General Counsel, for attention. In all other cases where copies of documents or records are desired by or on behalf of parties to a suit, whether in a court of the United States or any other, such copies shall be furnished as provided in paragraph (d) of this section; otherwise to the court only, and on an order of the court or subpoena duces tecum addressed to the Administrator of Veterans' Affairs or the head of the field station in which the records desired are located requesting the same. The determination as to the action to be taken upon any order received in this class of cases shall be made by the service having jurisdiction over the subject matter in central office or the division having jurisdiction over the subject matter in the field station, except in those cases in which the records desired are to be used adversely to the claimant, in which latter event the order of the court or the subpoena will be referred to the General Counsel in Central Office or to the Chief Attorney in the field station for disposition.

(2) Where a claim under the provisions of the Federal Tort Claims Act has been filed or where such a claim can reasonably be anticipated, no information, documents, reports, etc., will be released except through the Chief Attorney of jurisdiction, who will be limited to release of information which would be available under discovery proceedings, were the matter in litigation. Any other information may be released only after concurrence by the General Counsel.

(b) Where the process of a United States court requires the production of documents or records (or copies thereof) contained in the Veterans Administration file of a claimant, such documents or records (or copies) will be made available to the court out of which process has been issued. Where original records are produced, they must remain at all times in the custody of a representative of the Veterans Administration, and, if offered and received in evidence, permission should be obtained to substitute a copy so that the original may remain intact in the file. Where the subpoena is issued on the praecipe of a party litigant other than the United States, such party litigant must prepay the costs of copies in accordance with fees prescribed by § 1.526(i) and any other costs incident to production.

(c) Where copies of documents or records are requested by the process of any State or municipal court, workmen's compensation board or other administrative agency, functioning in a quasi-judicial capacity, the process when presented must be accompanied either by authority from the claimant concerned to comply therewith or by an affidavit of the attorney of the party securing the same, setting forth the character of the pending suit, the purpose for which the documents or records sought are to be used as evidence, and, if adversely to the claimant, information from which it may be determined whether the furnishing of the records sought is necessary to prevent the perpetration of fraud or other injustice. When the process received is accompanied by authorization of the claimant to comply therewith, if otherwise it be proper under §§ 1.501 to 1.526, copies of the records requested shall be furnished to the attorney for the party who caused the process to be issued upon the payment of the prescribed fee. If it appears by the process or otherwise that the records are to be used adversely to the claimant, the averments contained in the affidavit shall be considered in connection with the facts shown by the claimant's file, and, if such consideration shows the disclosure of the records is necessary and proper to prevent a fraud or other injustice, the records requested shall be produced before the court, or board or other agency on the date stipulated in the subpoena duces tecum, or other proper process and appropriate disclosure made within the limits of §§ 1.501 to 1.526. In such case both the attorney for the veteran and the attorney for the party who secured the process shall be advised by the Veterans Administration representative having

custody of the records or file that the same are available for examination within said limits by either or both of the said attorneys. Payment of the fees as prescribed by the schedule of fees, as well as the amount of any other cost incident to producing the records, must first be deposited with the Veterans Administration by the party who caused the process to be issued. If the responsible Veterans Administration employees (see par. (a) of this section) decide that insufficient cause has been shown to warrant releasing the requested information, the Veterans Administration employee who responds to the process will insist that Veterans Administration records are confidential and privileged and, although they are produced at the hearing, he will decline to reveal their content. The file must remain at all times in the custody of a representative of the Veterans Administration, and, if there is an offer and admission of any record or document contained therein, permission should be obtained to substitute a copy so that the original may remain intact in the file.

(d) Requests received from attorneys or others for copies of records for use in suits in which the Government is not involved, not accompanied by a subpoena or court order, will be handled by the service or division having jurisdiction over the subject matter. If the request is such as can be complied with under § 1.503 or § 1.504, the records requested will be furnished upon receipt of the required fee. If, however, the records cannot be furnished under such sections, the applicant will be advised of the procedure to obtain copies of records for court use as set forth in paragraph (c) of this section.

(e) In suits by or against the Administrator under 38 U.S.C. 1820, the files pertaining to the loan guaranteed, insured, or made by the Veterans Administration may be made available by the General Counsel or the Chief Attorney subject to the usual rules of evidence, after clearance with the Department of Justice or U.S. Attorney, if appropriate.

[21 FR 10376, Dec. 28, 1956; 22 FR 1720, Mar. 16, 1957, as amended at 31 FR 15091, Dec. 1, 1966; 32 FR 10849, July 25, 1967; 38 FR 5468, Mar. 1, 1973]

§ 1.512 Disclosure of loan guaranty information.

In general, the facts in loan guaranty files will be made available to any party privy to a loan guaranteed, insured or made by the Veterans Administration if deemed proper by a Loan Guaranty Officer. Appraisal reports, however, and certificates of reasonable value shall be made available, upon request, to any party whether or not there is privity to the transactions. Information in the claims folder, insurance or other file, will be released to lenders or prospective lenders only in accord with §§ 1.501 through 1.526: *Provided*, That the fact of adjudication of incompetency by court or rating board may be made known in appropriate circumstances to a lender or prospective lender.

[39 FR 12248, Apr. 4, 1974]

§ 1.513 Disclosure of information contained in Armed Forces service and related medical records in Veterans Administration custody.

(a) *Service records.* Information received by the Veterans Administration from the Departments of the Army, Navy, Air Force, and the Department of Transportation relative to the military or naval service of a claimant is furnished solely for the official use of the Veterans Administration, but such information may be disclosed under the limitations contained in §§ 1.501 through 1.526.

(b) *Medical records.* Information contained in the medical records (including clinical records and social data) may be released under the following conditions:

(1) Complete transcript of resumé or medical records on request to:

(i) The Department of the Army.

(ii) The Department of the Navy (including naval aviation and United States Marine Corps).

(iii) The Department of the Air Force.

(iv) The Department of Transportation (Coast Guard).

(v) Selective Service (in case of registrants only).

(vi) Federal or State hospitals or penal institutions when the veteran is a patient or inmate therein.

(vii) United States Public Health Service, or other governmental or contract agency in connection with research authorized by, or conducted for, the Veterans Administration.

(viii) Registered civilian physicians, on the request of the individual or his or her legal representative, when required in connection with the treatment of the veteran. (The transcript or resume 1 should be accompanied by the statement "it is expected that the information contained herein will be treated as confidential, as is customary in civilian professional medical practice.")

(ix) The veteran on request, except information contained in the medical record which would prove injurious to his or her physical or mental health.

(x) The next of kin on request of the individual, or legal representative, when the information may not be disclosed to the veteran because it will prove injurious to his or her physical or mental health, and it will not be injurious to the physical or mental health of the next of kin or cause repugnance or resentment toward the veteran; and directly to the next of kin, or legal representative, when the veteran has been declared to be insane or is dead.

(xi) Health and social agencies, on the authority of the veteran or his duly authorized representative.

(2) In addition to the authorizations in paragraph (b)(1) of this section, the Department of Justice, the Department of the Treasury, and the Post Office Department may, on request, be given pertinent information from medical records for use in connection with investigations conducted by these departments. Each such request shall be considered on its merits, and the information released should be the minimum necessary in connection with the investigation conducted by these departments.

(3) Compliance with court orders calling for the production of medical records in connection with litigation or criminal prosecutions will be effected in accordance with § 1.511.

[13 FR 7001, Nov. 27, 1948, as amended at 32 FR 10849, July 25, 1967]

§ 1.513a Confidentiality of information and patient records prepared or obtained under the sickle cell anemia program.

Information and patient records prepared or obtained under the sickle cell anemia program of screening, counseling, treatment, and information (38 U.S.C. 651-654, Public Law 93-82, August 2, 1973) shall be held confidential except for:

(a) Such information as the patient (or his guardian) requests in writing to be released or

(b) Statistical data compiled without reference to patient names or other identifying characteristics.

[39 FR 7929, Mar. 1, 1974]

§ 1.514 Disclosure to private physicians and hospitals other than Veterans Administration.

(a) When a beneficiary elects to obtain medical attention as a private patient from a private practitioner or in a hospital other than a Veterans Administration hospital, there may be disclosed to such private practitioner or head of such hospital (Federal, State, municipal, or private), such information as to the medical history, diagnosis, findings, or treatment as is requested, including the loan of original X-ray films, whether Veterans Administration clinical X-rays or service department entrance and separation X-rays, provided there is also submitted a written authorization from the beneficiary or his duly authorized representative. The information will be supplied without charge directly to the private physician or hospital head and not through the beneficiary or representative. In forwarding this information, it will be accompanied by the stipulations that it is released with consent of or on behalf of the patient and that the information will be treated as confidential, as is customary in civilian professional medical practice.

(b) Such information may be released without charge and without consent of the patient or his duly authorized representative when a request for such information is received from:

(1) The superintendent of a State hospital for psychotic patients, a com-

missioner or head of a State department of mental hygiene, or head of a State, county, or city health department; or

(2) Any fee basis physician or institution in connection with authorized treatment of the veteran as a Veterans Administration beneficiary; or

(3) Any physician or medical installation treating the veteran under emergency conditions.

[34 FR 13368, Aug. 19, 1969]

§ 1.514a Disclosure to private psychologists.

When a beneficiary elects to obtain therapy or analysis as a private patient from a private psychologist, such information in the medical record as may be pertinent may be released. Generally, only information developed and documented by Veterans Administration psychologists will be considered pertinent, although other information from the medical record may be released if it is determined to be pertinent and will serve a useful purpose to the private psychologist in rendering his services. Information will be released under this section upon receipt of the written authorization of the beneficiary or his duly authorized representative. Information will be forwarded to private psychologists directly, not through the beneficiary or representative, without charge and with the stipulation that it is released with consent of or on behalf of the patient and must be treated as confidential as is customary in regular professional practice.

[34 FR 13368, Aug. 19, 1969]

§ 1.515 To commanding officers of State soldiers' homes.

When a request is received in a Veterans Administration regional office, center, or hospital from the commanding officer of a State soldiers' home for information other than information relative to the character of the discharge from a Veterans Administration center or hospital concerning a veteran formerly domiciled or hospitalized therein, the provisions of § 1.500 are applicable, and no disclosure will be made unless the request is accompanied by the authorization outlined in § 1.503. However, station heads, upon receipt of a request from the commanding officer of a State soldiers' home for the character of the discharge of a veteran from a period of hospital treatment or domiciliary care as a beneficiary of the Veterans Administration, will comply with the request, restricting the information disclosed solely to the character of the veteran's discharge from such treatment or care. Such information will be disclosed only upon receipt of a specific request therefor from the commanding officer of a State soldiers' home.

[30 FR 6435, May 8, 1965]

§ 1.516 Disclosure of information to undertaker concerning burial of a deceased veteran.

When an undertaker requests information believed by him to be necessary in connection with the burial of a deceased veteran, such as the name and address of the beneficiary of the veteran's Government insurance policy, name and address of the next of kin, rank or grade of veteran and organization in which he served, character of the veteran's discharge, or date and place of birth of the veteran, and it appears that the undertaker is holding the body awaiting receipt of the information requested, the undertaker, in such instances, may be considered the duly authorized representative of the deceased veteran for the purpose of obtaining said information. In ordinary cases, however, the undertaker will be advised that information concerning the beneficiary of a Government insurance policy is confidential and cannot be disclosed; the beneficiary will be advised immediately of the inquiry, and the furnishing of the desired information will be discretionary with the beneficiary. In no case will the undertaker be informed of the net amount due under the policy or furnished information not specifically mentioned in this section.

[32 FR 10849, July 25, 1967]

§ 1.517 Disclosure of vocational rehabilitation and education information to educational institutions cooperating with the Veterans Administration.

Requests from educational institutions and agencies cooperating with the Veterans Administration in the vocational rehabilitation and education of veterans for the use of vocational rehabilitation and education records for research studies will be forwarded to central office with the station head's recommendation for review by the Chief Benefits Director. Where the request to conduct a research study is approved by the Chief Benefits Director, the station head is authorized by this section to release information for such studies from vocational rehabilitation and education records as required: *Provided, however,* That any data or information obtained shall not be published without prior approval of the Chief Benefits Director and that data contained in published material shall not identify any individual veteran.

[30 FR 6435, May 8, 1965]

§ 1.518 Addresses of claimants.

(a) It is the general policy of the Veterans Administration to refuse to furnish addresses from its records to persons who desire such information for debt collection, canvassing, harassing or for propaganda purposes.

(b) The address of a Veterans Administration claimant as shown by Veterans Administration files may be furnished to:

(1) Duly constituted police or court officials upon official request and the submission of a certified copy either of the indictment returned against the claimant or of the warrant issued for his arrest.

(2) Police, other law enforcement agencies, or Federal, State, county, or city welfare agencies upon official written request showing that the purpose of the request is to locate a parent who has deserted his child or children and that other reasonable efforts to obtain an address have failed. The address will not be released when such disclosure would be prejudicial to the mental or physical health of the claimant. When an address is furnished it will be accompanied by the stipulation that it is furnished on a confidential basis and may not be disclosed to any other individual or agency.

(c) When an address is requested that may not be furnished under §§ 1.500 through 1.526, the person making the request will be informed that a letter, or in those cases involving judicial actions, the process or notice in judicial proceedings, enclosed in an unsealed envelope showing no return address, with the name of the addressee thereon, and bearing sufficient postage to cover mailing costs will be forwarded by the Veterans Administration. If a request indicates that judicial action is involved in which a process or notice in judicial proceedings is required to be forwarded, the Veterans Administration will inform the person who requests the forwarding of such a document that the envelope must bear sufficient postage to cover costs of mailing and certified or registered mailing fees, including cost of obtaining receipt for the certified or registered mail when transmission by this type special mail is desired. At the time the letter, process, or notice in judicial proceedings is forwarded, the station's return address will be placed on the envelope. When the receipt for certified or registered mail or the undelivered envelope is returned to the Veterans Administration, the original sender will be notified thereof: However, the receipt or the envelope will be retained by the Veterans Administration. This provision will be applicable only when it does not interfere unduly with the functions of the Service or division concerned. In no event will letters be forwarded to aid in the collection of debts or for the purpose of canvassing, harassing, or propaganda. Neither will a letter be forwarded if the contents could be harmful to the physical or mental health of the recipient.

[33 FR 10516, July 24, 1968 and 35 FR 5176, Mar. 27, 1970]

§ 1.519 Lists of names and addresses.

(a) Any organization wanting a list of names and addresses of present or former personnel of the armed serv-

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ices and their dependents from the Veterans Administration must make written application to the Veterans Administration Controller, except lists of educationally disadvantaged veterans should be requested from the Director of the nearest regional office. The application must:

(1) Clearly identify the type or category of names and addresses sought;

(2) Furnish proof satisfactory to the Veterans Administration that the organization seeking the list is a "nonprofit organization." Normally, evidence establishing that the organization is exempt from taxation in accordance with the provisions of 26 U.S.C. 501 or is a governmental body or institution will be accepted as satisfying this criteria;

(3) Contain a statement clearly setting forth the purpose for which the list is sought, the programs and the resources the organization proposes to devote to this purpose, and establish how such purpose is "directly connected with the conduct of programs and the utilization of benefits" under Title 38, United States Code; and

(4) Contain a certification that the organization, and all members thereof who will have access to the list, are aware of the penalty provisions of 38 U.S.C. 3301(9) and will not use the list for any purpose other than that stated in the application.

(b) If the Director of the regional office concerned finds that the organization requesting the list of names and addresses of educationally disadvantaged veterans is a nonprofit organization and operates an approved program of special secondary, remedial, preparatory, or other educational or supplementary assistance to veterans as provided under Subchapter V, Chapter 34, Title 38, United States Code, then he may authorize the release of such names and addresses to the organization requesting them.

(c) The Veterans Administration Controller, with the concurrence of the General Counsel, is authorized to release lists of names and addresses to organizations which have applied for such lists in accordance with paragraph (a) of this section if he finds that the purpose for which the organization desires the names and addresses is directly connected with the conduct of programs and the utilization of benefits under Title 38, United States Code. Lists of names and addresses authorized to be released pursuant to this paragraph shall not duplicate lists released to other elements, segments, or chapters of the same organization.

(d) If the list requested is one that the Veterans Administration has previously compiled or created, in the same format, to carry out one or more of its basic program responsibilities and it is determined that it can be released, the list may be furnished without charge. For other types of lists, a charge will be made in accordance with the provisions of § 1.526.

(e) Upon denial of a request, the Veterans Administration Controller or Regional Office Director will inform the requester in writing of the denial and the reasons therefor and advise the organization that it may appeal the denial to the Administrator. In each instance of a denial of a request, the denial and the reasons therefor will be made a matter of record.

(f) Section 3301(9), Title 38, United States Code, provides that any organization, or any member thereof, which uses the names and addresses furnished it for any purpose other than one directly connected with the conduct of programs and the utilization of benefits under Title 38, United States Code, shall be fined not more than $500 in the case of the first offense and not more than $5,000 in the case of subsequent offenses. Any instance in which there is evidence of a violation of these penal provisions will be reported in accordance with § 14.560 of this chapter.

[38 FR 15601, June 14, 1973]

§ 1.520 Confidentiality of social data.

Persons having access to social data will be conscious of the fact that the family, acquaintances, and even the veteran himself have been willing to reveal these data only on the promise that they will be held in complete confidence. There will be avoided direct, ill-considered references which may jeopardize the personal safety of these individuals and the relationship existing among them, the patient, and the

social worker, or may destroy their mutual confidence and influence, rendering it impossible to secure further cooperation from these individuals and agencies. Physicians in talking with beneficiaries will not quote these data directly but will regard them as indicating possible directions toward which they may wish to guide the patient's self-revelations without reproaching him for his behavior or arousing natural curiosity or suspicion regarding any informant's statement. The representatives of service organizations and duly authorized representatives of veterans will be especially cautioned as to their grave responsibility in this connection.

[13 FR 7002, Nov. 27, 1948]

§ 1.521 Special restrictions concerning social security records.

Information received from the Social Security Administration may be filed in the veteran's claims folder without special provisions. Such information will be deemed privileged and may not be released by the Veterans Administration except that information concerning the amount of social security benefits paid to a claimant or the amount of social security tax contributions made by the claimant may be disclosed to the claimant or his duly authorized representative. Any request from outside the Veterans Administration for other social security information will be referred to the Social Security Administration for such action as they deem proper.

[27 FR 9599, Sept. 28, 1962]

§ 1.522 Determination of the question as to whether disclosure will be prejudicial to the mental or physical health of claimant.

Determination of the question when disclosure of information from the files, records, and reports will be prejudicial to the mental or physical health of the claimant, beneficiary, or other person in whose behalf information is sought, will be made by the Chief Medical Director; Chief of Staff of a hospital; or the Director of an outpatient clinic.

[33 FR 19009, Dec. 20, 1968]

§ 1.523 [Reserved]

§ 1.524 Persons authorized to represent claimants.

A duly authorized representative will be: (a) Any person authorized in writing by the claimant to act for him, (b) an attorney who has filed the declaration required by § 14.629(b)(1) of this chapter, or (c) his legally constituted fiduciary, if the claimant is incompetent. Where for proper reasons no legally constituted fiduciary has been or will be appointed, his wife, his children, or, if the claimant is unmarried, either of his parents shall be recognized as the fiduciary of the claimant.

[33 FR 6536, Apr. 30, 1968]

§ 1.525 Inspection of records by or disclosure of information to recognized representatives of organizations and recognized attorneys.

(a)(1) The accredited representatives of recognized organizations (§ 14.627 of this chapter) holding appropriate power of attorney and recognized attorneys (§ 14.629(b) of this chapter) with the written authorization of the claimant may, subject to the restrictions imposed by paragraph (a)(2) of this section, inspect the claims, insurance and allied folders of any claimant upon the condition that only such information contained therein as may be properly disclosed under §§ 1.500 through 1.526 will be disclosed by him to the claimant or, if the claimant is incompetent, to his legally constituted fiduciary. Under the same restrictions, it is permissible to release information from and permit inspection of loan guaranty folders in which a request for a waiver of the debt of a veteran or his spouse has been received, or where there has been a denial of basic eligibility for loan guaranty benefits. All other information in the files shall be treated as confidential and will be used only in determining the status of the cases inspected or in connection with the presentation to officials of the Veterans Administration of the claim of the claimant. The heads of field stations and the directors of the services concerned in Central Office will each designate a responsible offi-

cer to whom requests for all files must be made, except that managers of centers with insurance activities will designate two responsible officials, recommended by the division chiefs concerned, one responsible for claims and allied folders and the other for insurance files. The term "claimant" as used in this paragraph includes insureds.

(2) In the case of a living veteran a representative acting under a power of attorney from any person not acting on behalf of the veteran will not be permitted to review the records of the veteran or be furnished any information therefrom to which the person is not entitled, i.e., information not relating to such person alone. Powers of attorney submitted by the other person will be considered "Limited" and will be so noted when associated with the veteran's records. The provisions of this subparagraph are also applicable to recognized attorneys and the requisite declarations filed by them.

(3) When power of attorney does not obtain, the accredited representative will explain to the designated officer of the Veterans Administration the reason for requesting information from the file, and the information will be made available only when in the opinion of the designated officer it is justified; in no circumstances will such representatives be allowed to inspect the file; in such cases a contact report will be made out and attached to the case, outlining the reasons which justify the verbal or written release of the information to the accredited representative.

(4) In any case where there is an unrevoked power of attorney or declaration of representation, no persons or organizations other than the one named in such document shall be afforded information from the file except under the conditions set forth in § 14.629(b)(2) of this chapter. When any claimant has filed notice with the Veterans Administration that he does not want his file inspected, such file will not be made available for inspection.

(b)(1) Inspection of folders by accredited representatives or recognized attorneys holding a written authorization where such cases are being processed shall be in space assigned for such inspection. Otherwise station heads may permit inspection of folders at the desks of the accredited representatives, in the office(s) which they regularly occupy.

(2) An insured or after maturity of the insurance by death of the insured, the beneficiary, may authorize the release to a third person of such insurance information as the insured or the beneficiary would be entitled to receive, provided there is submitted to the Veterans Administration, a specific authorization in writing for this purpose.

(3) Unless otherwise authorized by the insured or the beneficiary, as the case may be, such authorized representative, recognized attorney or accredited representative shall not release information as to the designated beneficiary to anyone other than the insured or to the beneficiary after death of the insured. Otherwise, information in the insurance file shall be subject to the provisions of §§ 1.500 through 1.526.

(4) Clinical records and medical files, including files for outpatient treatment, may be inspected by accredited representatives or recognized attorneys holding a written authorization only to the extent such records or parts thereof are incorporated in the claims folder, or are made available to Veterans Administration personnel in the adjudication of the claim. Records or data in clinical or medical files which are not incorporated in the claims folder or which are not made available to Veterans Administration personnel for adjudication purposes will not be inspected by anyone other than those employees of the Veterans Administration whose duties require same for the purpose of clinical diagnosis or medical treatment.

(5) Under no circumstances shall any paper be removed from a file, except by a Veterans Administration employee, for purpose of having an authorized copy made. Copying of material in a file shall not be permitted except in connection with the performance of authorized functions under the power of attorney or requisite declaration of a recognized attorney.

(6) In any case involving litigation against the Government, whether contemplated or initiated, inspection, subject to the foregoing, shall be within the discretion of the General Counsel or Chief Attorney, except that in insurance suits under 38 U.S.C. 775, 784, inspection shall be within the discretion of the official having jurisdiction of the claim. Files in such cases may be released to the Department of Justice, but close liaison will be maintained to insure their return intact upon termination of the litigation.

(c) Station heads and the directors of the services concerned in central office will be responsible for the administrative compliance with and accomplishment of the foregoing within their jurisdiction, and any violations of the prescribed conditions for inspection of files or release of information therefrom will be brought to the immediate attention of the Administrator.

(d) Any person holding power of attorney, a recognized attorney who has filed the requisite declaration, or the accredited representative of a recognized organization holding power of attorney shall be supplied with a copy of each notice to the claimant respecting the adjudication of the claim. If a claimant dies before action on the claim is completed, the person or organization holding power of attorney or the attorney who has filed the requisite declaration may continue to act until the action is completed except where the power of attorney or requisite declaration was filed on behalf of a dependent.

(e) When in developing a claim the accredited representative of a recognized organization finds it necessary to call upon a local representative to assemble information or evidence, he may make such disclosures to the local representative as the circumstances of the case may warrant, provided the power of attorney to the recognized organization contains an authorization permitting such disclosure.

[13 FR 7002, Nov. 27, 1948, as amended at 31 FR 3459, Mar. 5, 1966; 32 FR 10849, July 25, 1967; 33 FR 6536, Apr. 30, 1968]

§ 1.526 Copies of records and papers.

(a) Any person desiring a copy of any record or document in the custody of the Veterans' Administration, which is subject to be furnished under §§ 1.501 through 1.526, must make written application for such copy to the Veterans' Administration installation having custody of the subject matter desired, stating specifically: (1) The particular record or document the copy of which is desired and whether certified and validated, or uncertified, (2) the purpose for which such copy is desired to be used.

(b) The types of services provided by the Veterans Administration for which a schedule of fees is established in paragraph (i) of this section are: (1) Copying, (2) certification, (3) search and (4) handling of files under court subpoena.

(c) This section applies to the services furnished in paragraph (b) of this section when rendered to members of the public by the Veterans' Administration. It does not apply to such services when rendered to or for other agencies or branches of the Federal Government, or State and local governments when furnishing the service will help to accomplish an objective of the Veterans' Administration, or when performed in connection with a special research study or compilation when the party requesting such services is charged an amount for the whole job.

(d) When copies of a record or document are furnished under §§ 1.506, 1.507, 1.510, and 1.514, such copies shall be supplied without charge. Moreover, free service may be provided, to the extent of one copy, to persons who have been required to furnish original documents for retention by the Veterans' Administration.

(e) The following are circumstances under which services may be provided free at the discretion of station heads or responsible Central Office officials:

(1) When requested by a court, when the copy will serve as a substitute for personal court appearance of a Government witness.

(2) When furnishing the service free saves costs or yields income equal to the direct costs of the agency providing the service. This includes cases

where the fee for the service would be included in a billing against the Government (for example, in cost-type contracts, or in the case of private physicians who are treating Government beneficiaries at Government expense).

(3) To the extent of one copy, to those who require copies of records or information from the records in order to obtain financial or other benefits to which they may be entitled.

(4) When a service is occasional and incidental, not of a type that is requested often, and if it is administratively determined that a fee would be inappropriate in such an occasional case.

(f) When information, statistics, or reports are released or furnished under § 1.501 or § 1.519, the fee charge, if any, will be determined upon the merits of each individual application.

(g) In those cases where it is determined that a fee shall be charged, the applicant will be advised to deposit the amount of the lawful charge for the copy desired. The amount of such charge will be determined in accordance with the schedule of fees prescribed in paragraph (i) of this section. The desired copy will not be delivered, except under court subpoena, until the full amount of the lawful charge is deposited. Any excess deposit of $1 or more over the lawful charge will be returned to the applicant. Excess deposits of less than $1 will be returned upon request. When a deposit is received with an application, such a deposit will be returned to the applicant should the application be denied.

(h) Copies of reports or records received from other Government departments or agencies will not be furnished except as provided in § 1.513.

(i) Schedule of fees:

(1) Typewritten pages, each page or fraction thereof	$1.50
(2) Photocopy reproductions from all types of copying processes	
(i) First reproduction image	0.25
(ii) Each additional reproduction image	.10
(3) Certification	.50
Seal, including certification	.50
(4) Searching, per hour (minimum charge one-half hour)	4.00
(5) Abstracts or copies of medical and dental records furnished to insurance companies. Per request	4.00
(6) Office handling of files under court subpoena	
(i) When the file is in the office served with the subpoena	5.00
(ii) When the file must be shipped from a different geographical area to the office served with the subpoena	10.00
(7) Fees to be determined based on actual costs.	

The fee to be charged for special information, statistics, reports, tapes (direct copies of existing tapes or special tapes created to contain specific data such as a listing of veterans by name and address), audiovisual items (motion pictures, film strips, slide sets, sound recordings, video tapes, or combinations thereof), drawings, specifications, photographs, etc., will be based on the actual cost to the agency, including labor, reproduction machine time, computer time, material and overhead expenses.

Fee to be determined by the official authorized to release the information or his designee under § 1.556(a).

(j) If the copy is to be transmitted by certified or registered mail, airmail, or special delivery mail, the postal fees therefor shall be added to the other fees provided in paragraph (i) of this section (or the order must include postage stamps or stamped return envelopes for the purpose).

(k) Those Veterans Administration installations not having copying equipment are authorized to arrange with the nearest Veterans Administration installation having such equipment to make the necessary authorized copies of records or documents.

(l) Department, staff office, and field station heads are authorized to designate employees to certify copies of records and papers furnished under the provisions of paragraph (a) of this section.

[19 FR 3224, June 2, 1954, as amended at 32 FR 10850, July 25, 1967; 33 FR 9342, June 26, 1968; 35 FR 20001, Dec. 31, 1970; 37 FR 2676, Feb. 4, 1972; 39 FR 3938, Jan. 31, 1974]

§ 1.527 Administrative review.

(a) Any person may, in the event of a denial of his request to inspect or obtain information from or copies of records within the purview of §§ 1.501 through 1.526, appeal such denial. Such appeal, stating the circumstances of the denial, should be addressed, as appropriate, to the field station, department, or staff office head.

(b) A denial action not reversed by a field station, department, or staff office head on appeal, will be referred through normal channels to the Administrator.

(c) The final agency decision in such appeals will be made by the Administrator or the Deputy Administrator.

[32 FR 10850, July 25, 1967]

RELEASE OF INFORMATION FROM VETERANS ADMINISTRATION RECORDS OTHER THAN CLAIMANT RECORDS

NOTE: Sections 1.550 through 1.559 concern the availability and release of information from files, records, reports, and other papers and documents in Veterans Administration custody other than those pertaining to claims under any of the laws administered by the Veterans Administration. As to the release of information from Veterans Administration claimant records, see §§ 1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

[40 FR 12656, Mar. 20, 1975]

AUTHORITY: Sections 1.550 to 1.559 issued under 72 Stat. 1114; 38 U.S.C. 210.

§ 1.550 General.

The Veterans Administration's policy is one of disclosure of information from agency records to the extent permitted by law. This includes the release of information which the Veterans Administration is authorized to withhold under 5 U.S.C. 552(b) (see § 1.554) if it is determined: (a) By the Administrator of Veterans Affairs or the Deputy Administrator that disclosure of such information will serve a useful purpose or (b) by a department, staff office, or field station head or designee under § 1.556(a) that disclosure will not adversely affect the proper conduct of official business or constitute an invasion of personal privacy.

[40 FR 12656, Mar. 20, 1975]

§ 1.551 Publication in the Federal Register as constructive notice of information that affects the public.

(a) The Assistant Administrator for Planning and Evaluation, with the approval of the Administrator, will submit to the Director of the Federal Register, for publication for the guidance of the public, descriptions of Veterans Administration organization and functional responsibilities, Central Office and field, and the designations of places at which the public may secure information, obtain forms and applications, make submittals or requests, or obtain decisions. Such descriptions and designations will be maintained current through submission, for publication, of all amendments, revisions, or repeals of the foregoing.

(b) Department and Staff office heads will develop, with the approval of the Administrator, for submission by the Assistant Administrator for Planning and Evaluation to the Director of the Federal Register, for publication for the guidance of the public, Veterans Administration regulations containing:

(1) Statements of the general course and method by which Veterans Administration functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(2) Rules of procedure and instructions as to the scope and contents of all papers, reports, or examinations.

(3) Substantive rules of general applicability adopted by the Veterans Administration as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Veterans Administration.

(4) Every amendment, revision, or repeal of the foregoing.

(c) Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any matter required by this section to be published in the FEDERAL REGISTER and not so published.

[32 FR 10850, July 25, 1967, as amended at 40 FR 12656, Mar. 20, 1975]

§ 1.552 Public access to information that affects the public when not published in the Federal Register as constructive notice.

(a) All final orders in such actions as entertained by the Contract Appeals Board, those statements of policy and interpretations adopted by the Veterans Administration but not published in the FEDERAL REGISTER, and administrative manuals and staff instructions that affect any member of the public, unless promptly published and copies offered for sale, will be kept currently indexed by the office of primary program responsibility or the Manager, Administrative Services, as determined

by the Administrator or designee. Such index or indexes or supplements thereto will be promptly published, quarterly or more frequently, and distributed (by sale or otherwise) unless the Veterans Administration determines by order published in the FEDERAL REGISTER that publication would be unnecessary and impracticable, in which case the Veterans Administration will nonetheless provide copies of such index or indexes or supplements thereto on request at a cost not to exceed the direct cost of duplication. Both the index and the materials indexed as required by this paragraph will be made available to the public, for inspection and copying. Public reading facilities for this purpose will be maintained in Veterans Administration Central Office and Veterans Administration field stations, open to the public during the normal duty hours of the office in which located. Orders made in the adjudication of individual claims under laws administered by the Veterans Administration are confidential and privileged by statute (38 U.S.C. 3301) and so are exempt from this requirement.

(b) The voting records of the Contract Appeals Board will be maintained in a public reading facility in the Office of the Board in Central Office and made available to the public upon request.

(c) When publishing or making available to the public any opinion, order, statement of policy, interpretation, staff manual or instruction to staff, identifying details will be deleted, and the deletion justified in writing, to the extent required to prevent a clearly unwarranted invasion of personal privacy.

(d) No final order, opinion, statement of policy, interpretation, staff manual or instruction which is issued, adopted, or promulgated after July 4, 1967, that affects any member of the public may be relied upon, used, or cited as precedent against any private party unless it has been indexed and either made available or published as provided in this section or unless that private party shall have actual and timely notice of the terms thereof.

[32 FR 10850, July 25, 1967, as amended at 40 FR 12657, Mar. 20, 1975]

§ 1.553 Public access to other reasonably described records.

Reasonably described records in Veterans Administration custody, or copies thereof, other than records made available to the public under the provisions of §§ 1.551 and 1.552, requested in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, will be made promptly available, except as provided in § 1.554, to any person upon request. Such request must be in writing, over the signature of the requester and must contain a reasonable description of the record desired so that it may be located with relative ease. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Director or Veterans Services Officer in the nearest Veterans Administration regional office or to the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m. Monday through Friday for Veterans Administration Central Office and most field stations.

[40 FR 12657, Mar. 20, 1975]

§ 1.553a Time limits for Veterans Administration response to requests for records.

(a) When a request for records made under §§ 1.551, 1.552 or § 1.553 is received it will be promptly referred for action to the proper employee designated in accordance with § 1.556 to take initial action on granting or denying requests to inspect or obtain information from or copies of the records described.

(b) Any such request will then be promptly evaluated and a determination made within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the Veterans Administration will comply with the request. Upon determination to comply or deny the request the person making the request will be notified immediately of the determination and the reasons therefor, and of the right of the

person to appeal to the Administrator of Veterans' Affairs any adverse determination. Records to be furnished will be supplied promptly.

(c) Upon receipt of such an appeal from an adverse determination it will be evaluated and a further determination made within 20 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of the appeal. If on appeal the denial is in whole or in part upheld the Veterans Administration will notify the requester of the provisions for judicial review of this determination. (See §§ 1.557 and 1.558.)

(d) In unusual circumstances, specifically as follows, the time limits in paragraphs (b) and (c) of this section may be extended by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. The date specified will not result in an extension for more than 10 working days. "Unusual circumstances" will be interpreted to mean, but only to the extent reasonably necessary to the proper processing of the particular request, as follows:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Veterans Administration having substantial subject-matter interest therein.

(e) Pursuant to section 552(a)(6), title 5, United States Code, any person making a request to the Veterans Administration for records under section 552(a) (1), (2) or (3) (see §§ 1.551, 1.552 and 1.553) will be deemed to have exhausted his or her administrative remedies with respect to such request if the Veterans Administration fails to comply with the applicable time limit provisions of this section. If, however, the Government can show exceptional circumstances exist and that the Veterans Administration is exercising due diligence in responding to the request, the statute also permits the court to retain jurisdiction and allow the Veterans Administration additional time to complete its review of the records.

(f) Requests for the release of information from files, records, reports, and other papers and documents in Veterans Administration custody pertaining to claims under any of the laws administered by the Veterans Administration (covered by §§ 1.500 through 1.527) may also be initiated under 5 U.S.C. 552. Such requests will also be evaluated, a determination made within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of the request whether the Veterans Administration will comply with the request, and the requester notified immediately of the determination and the reasons therefor, and of the right of the person to appeal to the Administrator of Veterans' Affairs any adverse determination. Records to be furnished will be supplied promptly.

[40 FR 12657, Mar. 20, 1975]

§ 1.554 Exemptions from public access to agency records.

(a) The exemptions in this paragraph constitute authority to withhold from disclosure certain categories of information in Veterans Administration records except that any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this paragraph.

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy, and are in fact properly classified pursuant to such Executive order.

(2) Related solely to internal Veterans Administration personnel rules and practices.

(3) Specifically exempted from disclosure by statute other than 5 U.S.C. 552b, provided that such statute:

(i) Requires that the matters be withheld from the public in such a

manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Trade secrets and commercial or financial information obtained from any person and privileged or confidential.

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the Veterans Administration.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Investigatory records compiled for law enforcement purposes but only to the extent that the production of such records would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data (including maps) concerning wells.

(b) Information in the categories exempted under paragraph (a) of this section, other than in paragraph (a)(3) which is applicable to Veterans Administration claimant records, will be released only as authorized in § 1.550. The release of information from Veterans Administration claimant records will be made only in accordance with §§ 1.501 through 1.526.

[32 FR 10850, July 25, 1967, as amended at 40 FR 12657, Mar. 20, 1975; 42 FR 37976, July 26, 1977]

§ 1.555 Fees.

(a) Charges will not be made for the use of reading facilities for examination of materials which are to be available to the public under § 1.552. Charges will be made, except as provided in paragraphs (c), (d), (e), (f), and (g) of this section, in accordance with the uniform schedule of fees in paragraph (h) of this section, established pursuant to notice in the FEDERAL REGISTER, and receipt of public comment, to recover only the reasonable, standard, direct costs for document search and duplication of such materials in response to requests from the public. The desired copy will not be delivered, except under court subpoena, until the full amount of the lawful charge is deposited. Any excess deposited over the lawful charge will be returned.

(b) Charges will be made, except as provided in paragraphs (c), (d), (e), (f), and (g) of this section, on each request from the public to examine, copy, or to be furnished copies of other reasonably described records under § 1.553. Such charges, in accordance with the uniform schedule of fees in paragraph (h) of this section will be made to recover only the reasonable, standard, direct costs for such document search and, if requested, duplication of copies. Searches will not be undertaken until the requester has paid, or has provided sufficient assurance of payment of whatever fee is determined to be appropriate. Desired copies will not be delivered, except under court subpoena, until the full amount of the lawful charge is deposited. Any excess deposited over the lawful charge will be returned. When a deposit is received with a request, such a deposit will be returned if the request is denied.

(c) Where a contract with a reporting service requires that copies of transcripts be sold only by the service, the copy in Veterans Administration's possession may be made available for

inspection. If a copy is requested, the requester will be referred to the reporting service.

(d) No charges will be made for services rendered to or for other agencies or branches of the Federal Government, or State and local governments when the Veterans Administration, veterans and their beneficiaries, or the general public has a substantial interest in the purpose for which the service is requested.

(e) When information, statistics, or reports are approved by the Administration or the Deputy Administrator for release under § 1.550, the fee charge, if any, will be determined upon the merits of each individual application.

(f) Under the following circumstances services may be provided free at the discretion of station heads or responsible Central Office officials:

(1) When requested by press, radio, television, or other information representatives for dissemination to the general public.

(2) When furnishing the service free is in conformance with generally established business custom, such as furnishing personal reference data to prospective employers of former Government employees.

(3) To the extent of one copy, to those who require copies of records or information from the records in order to obtain financial or other benefits to which they may be entitled (e.g., employees with workmen's compensation claims).

(4) To an individual directly concerned in a hearing or other formal proceeding involving security requirements for Federal employment, one copy of any transcript made of such hearing or other proceeding.

(g) Documents and services will be furnished without charge or at a reduced charge where the station heads or responsible Central Office officials determine that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(h) Schedule of fees:

(1) Photocopy reproductions from all types of copying processes, each reproduction image—$0.05.

(2) Searching, per hour—$4.45.

(No charge for the first hour or fraction thereof.)

(3) The above search fee is not applicable to computerized record searches. In situations involving the use of computers to locate and extract the requested information, charges will be based only on the direct cost to the agency, including labor, material and computer time.

(4) Where the Veterans Administration undertakes to perform for a requester or for any other person services which are very clearly not required to be performed under section 552, title 5, United States Code, either voluntarily or because such services are required by some other law (e.g., the formal certification of records as true copies, attestation under the seal of the agency, creation of a new list, etc.), the question of charging fees for such services will be determined by the official or designee authorized to release the information under § 1.556, in the light of the federal user charge statute, 31 U.S.C. 483a, any other applicable law, and the provisions of § 1.526(i).

[37 FR 2676, Feb. 1972, as amended at 40 FR 12658, Mar. 20, 1975; 42 FR 10316, Feb. 22, 1977]

§ 1.556 Requests for other reasonably described records.

Each department, staff office, and field station head will designate an employee(s) who will be responsible for initial action on (granting or denying) requests to inspect or obtain information from or copies of records under their jurisdiction and within the purview of § 1.553. This responsibility includes maintaining a uniform listing of such requests. Data logged will consist of: Name and address of requester; date of receipt of request; brief description of request; action taken on request, granted or denied; citation of the specific section when request is denied; and date of reply to the requester. In the field a denial of any such request may be made only by the Director or the designated employee and in Central Office only by the department or staff office head or designee. The letter notifying the requester

of the denial will be signed by the official making the denial decision. Any legal question arising in a field station concerning the release of information will be referred to the appropriate District Counsel for disposition as contemplated by § 13.401* of this chapter. In Central Office such legal questions will be referred to the General Counsel. Any administrative question will be referred through administrative channels to the appropriate department or staff office head. All denials or proposed denials at the Central Office level will be coordinated with the Director, Information Service as well as the General Counsel.

[40 FR 12658, Mar. 20, 1975]

§ 1.557 Administrative review.

(a) Upon denial of a request, the responsible Veterans Administration official or designated employee will inform the requester in writing of the denial, cite the specific exemption in § 1.554 upon which the denial is based, set forth the names and titles or positions of each person responsible for the denial of such request, and advise that the denial may be appealed to the Administrator.

(b) The final agency decision in such appeals will be made by the Administrator or Deputy Administrator.

[40 FR 12658, Mar. 20, 1975]

§ 1.558 Judicial review.

Any person from whom the Veterans Administration has withheld information or records after proper request as provided in § 1.553 may file a complaint in the appropriate United States district court as provided in 5 U.S.C. 552(a)(4). The district court review is designed to follow final action at the agency head level.

[40 FR 12658, Mar. 20, 1975]

§ 1.559 Annual report to Congress.

(a) On or before March 1 of each calendar year the Administrator will submit a report to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

(b) The report will be compiled by the Controller and will include:

(1) The number of determinations made by the Veterans Administration not to comply with requests for records made to the Veterans Administration under § 1.550 series and the reasons for each such determination.

(2) The number of appeals made by persons under § 1.550 series, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information.

(3) The names and titles or positions of each person responsible for the denial of records requested under § 1.550 series, and the number of instances of participation for each.

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(5) A copy of every regulation made by the Veterans Administration regarding 5 U.S.C. 552.

(6) A copy of the fee schedule and the total amount of fees collected by the Veterans Administration for making records available under 5 U.S.C. 552.

(7) Such other information as indicates efforts to administer fully 5 U.S.C. 552.

[40 FR 12658, Mar. 20, 1975]

Safeguarding Personal Information in Veterans Administration Records

Note: Sections 1.575 through 1.584 concern the safeguarding of individual privacy from the misuse of information from files, records, reports, and other papers and documents in Veterans Administration custody. As to the release of information from Veterans Administration claimant records see § 1.500 series. As to the release of information from Veterans Administration records other than claimant records see § 1.550 series. Section 1.575 series implement the provisions of Pub. L. 93-579, December 31, 1974, adding a section 552a to title 5, United States Code providing that individuals be granted access to records concerning them which are maintained by Federal agencies, and for other purposes.

*Editorial Note: At 42 FR 41410, Aug. 17, 1977, § 13.401 was removed.

SOURCE: Sections 1.575—1.584 issued at 40 FR 33944, Aug. 12, 1975, unless otherwise noted.

§ 1.575 Social security numbers in veterans' benefits matters.

(a) Except as provided in paragraph (b) of this section, no one will be denied any right, benefit, or privilege provided by law because of refusal to disclose to the Veterans Administration a social security number.

(b) The Veterans Administration may require mandatory disclosure of a claimant's or beneficiary's social security number (including the social security number of a dependent of a claimant or beneficiary) as a condition precedent to receipt or continuation of receipt of compensation (where affected by outside income) or pension payable under the provisions of Chapters 11, 13, and 15 of Title 38, United States Code.

(c) A person requested by the Veterans Administration to disclose a social security number shall be told, as prescribed by § 1.578(c), whether disclosure is voluntary or mandatory. The person shall also be told that the Veterans Administration is requesting the social security number under the authority of Title 38, United States Code, that it will be used in the administration of veterans' benefits in the identification of veterans or persons claiming or receiving Veterans Administration benefits and their records, and that it may be used to verify social security benefit entitlement (including amounts payable) with the Social Security Administration and, for other purposes where authorized by both Title 38, United States Code and the Privacy Act of 1974, (Pub. L. 93-579), or, where required by another statute.

(38 U.S.C. 210c)

[44 FR 22068, Apr. 13, 1979]

§ 1.576 General policies, conditions of disclosure, accounting of certain disclosures, and definitions.

(a) The Veterans Administration will safeguard an individual against an invasion of personal privacy. Except as otherwise provided by law or regulation its officials and employees will:

(1) Permit an individual to determine what records pertaining to him or her will be collected, maintained, used, or disseminated by the Veterans Administration.

(2) Permit an individual to prevent records pertaining to him or her, obtained by the Veterans Administration for a particular purpose, from being used or made available for another purpose without his or her consent.

(3) Permit an individual to gain access to information pertaining to him or her in Veterans Administration records, to have a copy made of all or any portion thereof, and to correct or amend such records.

(4) Collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is correct and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(5) Permit exemptions from records requirements provided in 5 U.S.C. 552a only where an important public policy need for such exemption has been determined pursuant to specific statutory authority.

(b) The Veterans Administration will not disclose any record contained in a system of records by any means of communication to any person or any other agency except by written request of or prior written consent of the individual to whom the record pertains unless such disclosure is:

(1) To those officers and employees of the agency which maintains the record and who have a need for the record in the performance of their duties;

(2) Required under 5 U.S.C. 552;

(3) For a routine use of the record compatible with the purpose for which it was collected;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to Title 13, United States Code;

(5) To a recipient who has provided the Veterans Administration with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a

form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Veterans Administration specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(c) With respect to each system of records (i.e., a group of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual) under Veterans Administration control, the Veterans Administration will (except for disclosures made under paragraph (b)(1) or (2) of this section) keep an accurate accounting as follows:

(1) For each disclosure of a record to any person or to another agency made under paragraph (b) of this section, maintain information consisting of the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting made under paragraph (c)(1) of this section for at least 5 years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) Except for disclosures made under paragraph (b)(7) of this section, make the accounting under paragraph (c)(1) of this section available to the individual named in the record at his or her request; and

(4) Inform any person or other agency about any correction or notation of dispute made by the agency in accordance with § 1.577 of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) For the purposes of §§ 1.575 through 1.584, the parent of any minor, or the legal guardian of any individual who has been declared incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(e) Section 552a(i), Title 5, United States Code, provides that:

(1) Any officer or employee of the Veterans Administration, who by virtue of his or her employment or official position, has possession of, or access to, Veterans Administration records which contain individually identifiable information the disclosure of which is prohibited by 5 U.S.C. 552a or by § 1.575 series established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of the Veterans Administration who willfully maintains a system of records without meeting the notice requirements of 5 U.S.C. 552a(e)(4) (see § 1.578(d)) shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from the Veterans Administration under false pretenses shall be guilty of a mis-

demeanor and fined not more than $5,000.

(f) For purposes of § 1.575 series the following definitions apply:

(1) The term "agency" includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency.

(2) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(3) The term "maintain" includes maintain, collect, use, or disseminate.

(4) The term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(5) The term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(6) The term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual except as provided by section 8 of Title 13, United States Code.

(7) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(g) When the Veterans Administration provides by a contract for the operation by or on behalf of the Veterans Administration of a system of records to accomplish a Veterans Administration function, the Veterans Administration will, consistent with its authority, cause the requirements of 5 U.S.C. 552a (as required by subsection (m)) and those of the § 1.575 series to be applied to such system. For the purposes of 5 U.S.C. 552a(i) and § 1.576(e) any such contractor and any employee of such contractor, if such contract is agreed to on or after September 27, 1975, will be considered to be an employee of the Veterans Administration.

(h) The Veterans Administration will, for the purposes of 5 U.S.C. 552a, consider that it maintains any agency record which it deposits with the Administrator of General Services for storage, processing, and servicing in accordance with Section 3103 of Title 44, United States Code. Any such record will be considered subject to the provisions of § 1.575 series implementing 5 U.S.C. 552a and any other applicable Veterans Administration regulations. The Administrator of General Services is not authorized to disclose such a record except to the Veterans Administration, or under regulations established by the Veterans Administration which are not inconsistent with 5 U.S.C. 552a.

(i) The Veterans Administration will, for the purposes of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and was transferred to the National Archives prior to September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such records are not subject to the provisions of 5 U.S.C. 552a except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of 5 U.S.C. 552a) will be published in the FEDERAL REGISTER.

(j) The Veterans Administration will also, for the purposes of 5 U.S.C. 552a, consider that a record is maintained by the National Archives of the United States if it pertains to an identifiable individual and is transferred to the National Archives on or after September 27, 1975, as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government. Such

records are exempt from the requirements of 5 U.S.C. 552a except subsections (e)(4) (A) through (G) and (e)(9) thereof.

[40 FR 33944, Aug. 12, 1975, as amended at 40 FR 58644, Dec. 18, 1975]

§ 1.577 Access to records.

(a) Except as otherwise provided by law or regulation any individual upon request may gain access to his or her record or to any information pertaining to him or her which is contained in any system of records maintained by the Veterans Administration. The individual will be permitted, and upon his or her request, a person of his or her own choosing permitted to accompany him or her, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him or her. The Veterans Administration will require, however, a written statement from the individual authorizing discussion of that individual's record in the accompanying person's presence.

(b) Any individual may request amendment of any Veterans Administration record pertaining to him or her. Not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, the Veterans Administration will acknowledge in writing such receipt. The Veterans Administration will complete the review to amend or correct a record as soon as reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal public holidays) unless unusual circumstances preclude completing action within that time. The Veterans Administration will promptly either:

(1) Correct any part thereof which the individual believes is not accurate, relevant, timely, or complete; or

(2) Inform the individual of the Veterans Administration's refusal to amend the record in accordance with his or her request, the reason for the refusal, the procedures by which the individual may request a review of that refusal by the Administrator or designee, and the name and address of such official.

(c) Any individual who disagrees with the Veterans Administration's refusal to amend his or her record may request a review of such refusal. The Veterans Administration will complete such review not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review and make a final determination unless, for good cause shown, the Administrator extends such 30-day period. If, after review, the Administrator or designee also refuses to amend the record in accordance with the request the individual will be advised of the right to file with the Veterans Administration a concise statement setting forth the reasons for his or her disagreement with the Veterans Administration's refusal, and also advised of the provisions for judicial review of the reviewing official's determination (5 U.S.C. 552a(g) (1)(A)).

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (c) of this section, the Veterans Administration will clearly note any part of the record which is disputed and provide copies of the statement (and, if the Veterans Administration deems it appropriate, copies also of a concise statement of the Veterans Administration's reasons for not making the amendments requested) to persons or other agencies to whom the disputed record has been disclosed.

(e) Nothing in 5 U.S.C. 552a, however, allows an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

[40 FR 33944, Aug. 12, 1975, as amended at 41 FR 15009, Apr. 9, 1976]

§ 1.578 Veterans Administration system of records requirements.

(a) The Veterans Administration will maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the Veterans Administration required to be accomplished by statute or Executive order of the President.

(b) The Veterans Administration will collect information to the greatest

extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

(c) The Veterans Administration will inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual, of:

(1) The authority (whether granted by statute or Executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to paragraph (d)(4) of this section; and

(4) The effects on him or her, if any, of not providing all or any part of the requested information.

(d) Subject to the provisions of paragraph (k) of this section, the Veterans Administration will publish in the FEDERAL REGISTER at least annually a notice of the existence and character of its system of records. This notice will include:

(1) The name and location of the system or systems;

(2) The categories of individuals on whom records are maintained in the system or systems;

(3) The categories of records maintained in the system or systems;

(4) Each routine use of the records contained in the system or systems, including the categories of users and the purpose of such use;

(5) The policies and practices of the Veterans Administration regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the Veterans Administration official or officials responsible for the system or systems of records;

(7) The Veterans Administration procedures whereby an individual can be notified at his or her request if the system or systems of records contain a record pertaining to him or her;

(8) The Veterans Administration procedures whereby an individual can be notified at his or her request how he or she can gain access to any record pertaining to him or her contained in the system or systems of records, and how he or she can contest its content; and

(9) The categories of sources of records in the system or systems.

(e) All records used by the Veterans Administration in making any determination about any individual will be maintained with the accuracy, relevance, timeliness, and completeness reasonably necessary to assure fairness to the individual in the determination.

(f) Before disseminating any record about an individual to any person other than an agency the Veterans Administration will make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for Veterans Administration purposes unless the dissemination is required pursuant to 5 U.S.C. 552.

(g) The Veterans Administration will maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(h) The Veterans Administration will make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(i) The Veterans Administration will establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record. Each such person will be instructed regarding such rules and the requirements of 5 U.S.C. 552a. The instruction will include any other rules and procedures adopted pursuant to 5 U.S.C. 552a, and the penalties it provides for noncompliance.

(j) The Veterans Administration will establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality

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of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(k) At least 30 days prior to the publication of a notice in the FEDERAL REGISTER at least annually regarding the routine use of the records contained in the Veterans Administration system or systems of records including the categories of users and the purpose of such use, pursuant to paragraph (d)(4) of this section, the Veterans Administration will also:

(1) Publish a notice in the FEDERAL REGISTER of any new use or intended use of the information in the system or systems; and

(2) Provide an opportunity for interested persons to submit written data, views, or arguments to the Veterans Administration.

§ 1.579 Access to personal information from Veterans Administration records.

(a) The Veterans Administration will promulgate regulations, as necessary, to insure compliance with the provisions of 5 U.S.C. 552a, developed in accordance with the provisions of 5 U.S.C. 553, as applicable, and § 1.12.

(b) Any individual will be notified upon request if any Veterans Administration system of records named contains a record pertaining to him or her. Such request must be in writing, over the signature of the requester. The request must contain a reasonable description of the Veterans Administration system or systems of records meant, as described at least annually by notice published in the FEDERAL REGISTER describing the existence and character of the Veterans Administration's system or systems of records pursuant to § 1.578(d). The request should be made to the office concerned (having jurisdiction over the system or systems of records meant) or, if not known, to the Director, or Veterans Services Officer in the nearest VA regional office or to the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m. Monday through Friday for VA Central Office and most field stations. Identification of the individual requesting the information will be required consisting of name, signature, address, and claim, insurance or other identifying file number, if any, as a minimum. Additional identifying data or documents may be required in specified categories as determined by operating requirements and established and publicized by the promulgation of VA regulations.

(c) The department or staff office having jurisdiction over the records involved will establish appropriate disclosure procedures and will notify the individual requesting disclosure of his or her record or information pertaining to him or her of the time, place and conditions under which the Veterans Administration will comply to the extent permitted by law and VA regulation. Special procedures will be established by the department or staff office concerned governing the disclosure to an individual of medical records, including psychological records pertaining to him or her.

(d) The department or staff office having jurisdiction over the records involved will also establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the Veterans Administration of an initial adverse Veterans Administration determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his or her rights under 5 U.S.C. 552a.

(1) The following headquarters officials are designated as responsible for the amendment of records or information located in Central Office and under their jurisdiction, as appropriate: Administrator; Deputy Administrator; Chairman, Contract Appeals Board; Associate Deputy Administrator; Assistant Deputy Administrator; Chairman, Board of Veterans Appeals; General Counsel; Manager, Administrative Services; Controller; Assistant Administrator for Personnel; Director,

Information Service; Assistant Administrator for Planning and Evaluation; Assistant Administrator for Construction; Director, Contract Compliance Service; Chief Medical Director; Chief Benefits Director; Chief Data Management Director; and the Director, National Cemetery System. These officials will determine and advise the requester of the identifying information required to relate the request to the appropriate record, evaluate and grant or deny requests to amend, review initial adverse determinations upon request, and assist requesters desiring to amend or appeal initial adverse determinations or learn further of the provisions for judicial review.

(2) The following field officials are designated as responsible for the amendment of records or information located in facilities under their jurisdiction, as appropriate: The Director of each Center, Domiciliary, Hospital, Outpatient Clinic, Regional Office, Supply Depot; and District Counsels. These officials will function in the same manner at field facilities as that specified in paragraph (d)(1) of this section for headquarters officials in Central Office.

(e) Fees to be charged, if any, to any individual for making copies of his or her record, excluding the cost of any search for and review of the record, will be as follows:

(1) Photocopy reproductions from all types of copying processes, each reproduction image, $0.05.

(2) Where the Veterans Administration undertakes to perform for a requester or for any other person services which are very clearly not required to be performed under section 552a, title 5, United States Code, either voluntarily or because such services are required by some other law (e.g., the formal certification of records as true copies, attestation under the seal of the Veterans Administration, etc.), the question of charging fees for such services will be determined by the official or designee authorized to release the information under § 1.556, in the light of the Federal user charge statute, 31 U.S.C. 483a, any other applicable law, and the provisions of §§ 1.526(i) and 1.555(h).

[40 FR 33944, Aug. 12, 1975, as amended at 41 FR 3857, Jan. 27, 1976]

§ 1.580 Administrative review.

(a) Upon denial of a request under § 1.577, the responsible Veterans Administration official or designated employee will inform the requester in writing of the denial, cite the reason or reasons and the VA regulations upon which the denial is based, and advise that the denial may be appealed to the Administrator.

(b) The final agency decision in such appeals will be made by the Administrator or Deputy Administrator.

§ 1.581 Judicial review.

Any person may file a complaint against the Veterans Administration in the appropriate U.S. district court, as provided in 5 U.S.C. 552a(g), whenever the Veterans Administration:

(a) Makes a determination under § 1.577 not to amend an individual's record in accordance with his or her request, or fails to make such review in conformity with that section;

(b) Refuses to comply with an individual request under § 1.577;

(c) Fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(d) Fails to comply under any other provision of 5 U.S.C. 552a, or any VA regulation promulgated thereunder, in such a way as to have an adverse effect on an individual.

§ 1.582 Exemptions.

Certain systems of records maintained by the Veterans Administration are exempted from the provisions of the Privacy Act in accordance with exemptions (j) and (k). (5 U.S.C. 552a(j) and (k)). The systems of records which are within the (j) and (k) exemptions are identified in the VA Privacy Act system of records notice. (38 U.S.C. 210(c))

[46 FR 19235, Mar. 30, 1981]

§ 1.583 Mailing lists.

An individual's name and address may not be sold or rented by the Veterans Administration unless such action is specifically authorized by law. This section does not require the withholding of names and addresses otherwise permitted to be made public. (See also §§ 1.518 and 1.519.)

§ 1.584 Reports.

(a) The Administrator or designee will provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any Veterans Administration system or systems of records, as required by 5 U.S.C. 552a(o). This will permit an evaluation of the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(b) If at any time a Veterans Administration system or systems of records is determined to be exempt from the application of 5 U.S.C. 552a in accordance with the provisions of 5 U.S.C. 552a (j) and (k), the number of records contained in such system or systems will be separately listed and reported to the Office of Management and Budget in accordance with the then prevailing guidelines and instructions of that agency.

NATIONAL CEMETERIES

AUTHORITY: Sections 1.600 to 1.632 issued under 72 Stat. 1114, as amended, 87 Stat. 75; 38 U.S.C. 210, Chapter 24.

SOURCE: Sections 1.600 to 1.632 issued at 43 FR 26571, June 21, 1978, unless otherwise noted.

§ 1.600 The National Cemetery System.

The National Cemetery System authorized by 38 U.S.C. Chapter 24 (the National Cemeteries Act of 1973) consists of all cemeteries under the jurisdiction of the Veterans Administration on June 18, 1973, and the national cemeteries, soldiers' lots, confederate plots, cemeteries and monuments, and a national monument site and the Government-owned lots in the Congressional Cemetery, Washington, D.C., which were transferred on September 1, 1973, from the Department of the Army to the Veterans Administration, and any additional cemeteries designated by the Administrator. The Chief Memorial Affairs Director serves concurrently as the Director, National Cemetery System.

§ 1.601 Advisory Committee on Cemeteries and Memorials.

Responsibilities in connection with Committee authorized by 38 U.S.C. Chapter 24 are as follows:

(a) The Administrator shall appoint the Committee members and consult with the Committee with respect to the administration of the cemeteries, selection of cemetery sites, the erection of appropriate memorials and the adequacy of Federal burial benefits.

(b) The Chief Memorial Affairs Director will schedule the frequency of meetings, make presentations before the Committee, participate when requested by the Committee, evaluate Committee reports and recommendations and make recommendations to the Administrator based on Committee actions.

(c) The Committee will evaluate and study cemeterial, memorial and burial benefits proposals or problems submitted by the Administrator or Chief Memorial Affairs Director, and make recommendations as to course of action or solution. Reports and recommendations will be submitted to the Administrator for transmission to Congress.

§ 1.602 Names for national cemetery activities.

(a) *Responsibility.* The Administrator is responsible for naming national cemeteries. The Chief Memorial Affairs Director is responsible for naming activities and features therein, such as drives, walks, or special structures.

(b) *Basis for names.* The names of national cemetery activities may be based on physical and area characteristics, the nearest important city (town), or a historical characteristic

related to the area. Newly constructed interior thoroughfares for vehicular traffic in national cemetery activities will be known as "drives." To facilitate location of graves by visitors, drives will be named after cities, counties or States or after historically notable persons, places or events.

§ 1.603 Gifts and donations.

(a) *Policy.* The administrator may prescribe restrictions and accept gifts, devises or bequests from legitimate societies and organizations or reputable individuals, made in any manner, which are made for the purpose of beautifying national cemeteries, or are determined to be beneficial to such cemetery. The Administrator may make land available for this purpose, and may furnish such care and maintenance as deemed necessary. Gifts of a minor nature such as trees for placement in the burial area and privately purchased grave markers may be accepted by the Chief Memorial Affairs Director.

(b) *Processing.* All offers of gifts for national cemetery activities will be referred to the Chief Memorial Affairs Director, Veterans Administration, Washington, D.C. 20420. No commitment will be made to the donor regarding acceptance until the required approval has been obtained.

(c) *Restrictions.* (1) Gifts and donations will be accepted only after it has been determined that the donor has a clear understanding that title thereto passes to, and is vested in, the United States, and that the donor relinquishes all control over the future use or disposition of the gift or donation, with the following exceptions:

(i) Carillons will be accepted with the condition that the donor will provide the maintenance and the operator or the mechanical means of operation. The time of operation and the maintenance will be coordinated with the superintendent of the national cemetery.

(ii) Articles donated for a specific purpose and which are usable only for that purpose may be returned to the donor if the purpose for which the articles were donated cannot be accomplished.

(iii) If the donor directs that the gift is donated for a particular use, those directions will be carried out insofar as they are proper and practicable and not in violation of Veterans Administration policy.

(iv) When considered appropriate and not in conflict with the purpose of the national cemetery, the donor may be recognized by a suitable inscription on those gifts. In no case will the inscription give the impression that the gift is owned by, or that its future use is controlled by, the donor. Any tablet or plaque, containing an inscription will be of such size and design as will harmonize with the general nature and design of the gift.

(2) Officials and employees of the Veterans Administration will not solicit contributions from the public nor will they authorize the use of their names, the name of the Administrator, or the name of the Veterans Administration by an individual or organization in any campaign or drive for money or articles for the purpose of making a donation to the Veterans Administration. This restriction does not preclude discussion with the individual offering the gift relative to the appropriateness of the gift offered.

§ 1.604 Law enforcement and standards of conduct.

The superintendent is charged with the responsibility for the enforcement of rules and regulations governing conduct on national cemetery property. These rules and regulations, which are recorded in §§ 1.218 through 1.220, will be posted in a conspicuous place on cemetery property.

§§ 1.605—1.619 [Reserved]

§ 1.620 Eligibility for burial.

The following rules for eligibility for interment in national cemeteries apply to all former Veterans Administration cemeteries as of June 18, 1973. These rules of eligibility for interment also apply to all cemeteries transferred on September 1, 1973, from the Department of the Army to the Veterans Administration, and to any other cemetery later acquired or developed by the Veterans Administration. Burial is authorized in national cemeteries of the remains of the following:

(a) Any person who served on active duty in the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, and Coast Guard) who was discharged or released therefrom under conditions other than dishonorable. The determination of the character of discharge is subject to adjudication under § 3.12 of this chapter.

(b) Any member of the Armed Forces of the United States who died while on active duty.

(c) Any member of the Reserve components of the Armed Forces, the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted on incurred under honorable conditions while performing active duty for training, inactive duty training, or undergoing that hospitalization or treatment at the expense of the United States.

(d) Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while

(1) Attending an authorized training camp or on an authorized practice cruise.

(2) Performing authorized travel to or from that camp or cruise, or

(3) Hospitalized or undergoing treatment, at the expense of the United States, for injury or disease contracted or incurred under honorable conditions while

(i) Attending that camp or on that cruise,

(ii) Performing that travel, or

(iii) Undergoing that hospitalization or treatment at the expense of the United States.

(e) Any citizen of the United States who, during any war in which the United States is or has been engaged, served in the Armed Forces of any Government allied with the United States during that war, whose last such service terminated honorably, who was a citizen of the United States at the time of entry on such service and at the time of death.

(f) The spouse of any person listed in paragraphs (a) through (e) of this section or any interred veteran's unremarried surviving spouse. A surviving spouse of a veteran who has remarried and whose remarriage is void, terminated by death or dissolved by annulment or divorce by a court with basic authority to render such decrees regains eligibility for burial in a national cemetery unless it is determined that the decree of annulment or divorce was secured through fraud or collusion.

(g) A veteran's minor child (under 21 years of age or under 23 years of age if pursuing a course of instruction at an approved educational institution), or unmarried adult child who was physically or mentally disabled and incapable of self-support, in the same grave with the veteran or in an adjoining gravesite if prior reservation for that grave was in effect.

(h) Such other persons or classes of persons as may be designated by the Administrator.

§ 1.621 Disinterments from national cemeteries.

(a) Interments of eligible decedents in national cemetery activities are considered permanent and final. Disinterments will be permitted only for cogent reasons and then only with the prior written authorization of the Chief Memorial Affairs Director. Disinterments and removal of remains from a national cemetery activity will be approved only when all living close relatives of the decendent give their written consent or in recognition of a court order directing the disinterment.

(b) All requests for authority to disinter remains will be submitted on VA Forms 40-4970 and 40-4970a, Request for Disinterment, and Disinterment Affidavit, and will include the following information:

(1) A full statement of reasons for the proposed disinterment.

(2) Notarized statements by all close living relatives of the decedent that they consent to the proposed disinterment. "Close relatives" are defined as surviving spouse, parents, adult brothers and sisters, and adult children of the decedent. Copies of VA Forms 40-4970 and 40-4970a will be furnished by the Department of Memorial Affairs.

(3) A sworn statement, by a person having knowledge thereof, that those

who supplied affidavits comprise all the living close relatives of the deceased.

(c) In lieu of the documents required in paragraph (b) of this section, an order of a court of competent jurisdiction will be considered. The Veterans Administration or officials of the cemetery should not be made a party to the court action since this is a matter among the family members involved.

(d) Disinterment of the remains of the dependent of a veteran which were interred in a national cemetery, based on completion of an agreement by the veteran to be buried in the same or adjoining grave, may be authorized by the Chief Memorial Affairs Director upon receipt of a written request on VA Form 40-4983, Request for Disinterment (Dependent), from the veteran.

(e) Any disinterment that may be authorized under this section must be accomplished without expense to the Government.

§§ 1.622-1.629 [Reserved]

§ 1.630 Headstones and markers.

(a) Types of Government headstones and markers and inscriptions will be in accordance with policies approved by the Administrator.

(b) Inscriptions on Government headstones, markers, and private monuments will be in accordance with policies and specifications of the Chief Memorial Affairs Director. The National Cemetery section designation and grave number will be inscribed on the reverse side, near the top of the upright headstone. The section designation and grave number on flat granite markers will be inscribed on the front (face) of the stone in the upper right corner.

(c) All memorial markers furnished by the Government may be erected in private cemeteries or in national cemetery sections established for this purpose. The markers for national cemeteries will be of the standard design authorized for the cemetery in which they are to be erected. In addition to the authorized inscription, the words "In Memory Of" are mandatory.

§ 1.631 Eligibility for headstone or marker.

(a) An approved type of headstone or marker will be furnished at Government expense, upon request, for the unmarked graves of the following:

(1) Any individual buried in a national cemetery or in a post cemetery.

(2) Any individual eligible for burial in a national cemetery (but not buried there) under the provisions of § 1.620, except for those persons or classes of persons enumerated in § 1.620 (e), (f), (g) and (h).

(b) An approved type of memorial headstone or marker will be furnished at Government expense, upon request, to commemorate any veteran dying in service, and whose remains have not been recovered or identified or were buried at sea. Memorial headstones or markers may be placed in national cemeteries in areas reserved for such purposes or in any private or local cemetery.

§ 1.632 Headstone and marker application required.

(a) Headstones and markers for graves in national cemeteries shall be ordered from the Record of Interment (VA Form 40-4956) prepared by the national cemetery superintendent at the time of interment. No further application is required.

(b) Submission of VA Form 40-1330, Application for Headstone or Marker, is required for the purpose of:

(1) Ordering a Government headstone or marker for any unmarked grave of any eligible veteran buried in a private or local cemetery.

(2) Ordering a Government headstone or marker for any unmarked grave in a post cemetery of the Armed Forces.

(3) Ordering a Government memorial headstone or marker for placement in a national cemetery, in a private or local cemetery and any post cemetery of the Armed Forces.

Inventions by Employees of Veterans Administration

Authority: Sections 1.650 to 1.666 issued under sec. 1, 66 Stat. 811, 72 Stat. 1114; 35 U.S.C. 266, 38 U.S.C. 210, E.O. 9865, 12 FR

3907, 3 CFR 1943-1948 Comp., E.O. 10096, 15 FR 389, 3 CFR 1949-1953 Comp.

§ 1.650 Purpose.

The purpose of the regulations concerning inventions by employees of the Veterans Administration is to prescribe the procedure to be followed in determining and protecting the respective rights of the United States Government and of Veterans Administration employees who make inventions.

[21 FR 10377, Dec. 28, 1956]

§ 1.651 Definitions.

The terms as used in the regulations concerning inventions by employees of the Veterans Administration are defined as follows:

(a) The term "invention" includes any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.

(b) The term "employee" or "Government employee" means any officer or employee, civilian or military, of the Veterans Administration. Part-time employees and part-time consultants are included, except when special circumstances in a specific case require the departure herefrom to meet the needs of the Veterans Administration, such circumstances to be reported to and approved by the Commissioner.

(c) The term "Commissioner" means the Commissioner of Patents, Department of Commerce, or his designee.

[21 FR 10377, Dec. 28, 1956, as amended at 31 FR 5291, Apr. 2, 1966]

§ 1.652 Governing provisions.

(a) *Executive Order 10096.* Paragraph 1, Executive Order 10096, dated January 23, 1950 (15 FR 389, 3 CFR, 1949-1953 Comp., p. 292) as amended by Executive Order 10930, dated March 24, 1961 (26 FR 2583, 3 CFR, 1959-1963 Comp., p. 456), provides in part:

(a) The Government shall obtain the entire right, title and interest in and to all inventions made by any Government employee (1) during working hours, or (2) with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other Government employees on official duty, or (3) which bear a direct relation to or are made in consequence of the official duties of the inventor.

(b) In any case where the contribution of the Government, as measured by any one or more of the criteria set forth in paragraph (a) last above, to the invention is insufficient equitably to justify a requirement of assignment to the Government of the entire right, title and interest to such invention, or in any case where the Government has insufficient interest in an invention to obtain entire right, title and interest therein (although the Government could obtain same under paragraph (a), above), the Government agency concerned, subject to the approval of the Commissioner of Patents, shall leave title to such invention in the employee, subject, however, to the reservation to the Government of a nonexclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, such reservation, in the terms thereof, to appear, where practicable, in any patent, domestic or foreign, which may issue on such invention.

(c) In applying the provisions of paragraphs (a) and (b), above, to the facts and circumstances relating to the making of any particular invention, it shall be presumed that an invention made by an employee who is employed or assigned (i) to invent or improve or perfect any art, machine, manufacture, or composition of matter, (ii) to conduct or perform research, development work, or both, (iii) to supervise, direct, coordinate, or review Government financed or conducted research, development work, or both, or (iv) to act in a liaison capacity among governmental or nongovernmental agencies or individuals engaged in such work, or made by an employee included within any other category of employees specified by regulations issued pursuant to section 4(b) hereof, falls within the provisions of paragraph (a), above, and it shall be presumed that any invention made by any other employee falls within the provisions of paragraph (b), above. Either presumption may be rebutted by the facts or circumstances attendant upon the conditions under which any particular invention is made and, notwithstanding the foregoing, shall not preclude a determination that the invention falls within the provisions of paragraph (d) next below.

(d) In any case wherein the Government neither (1) pursuant to the provisions of paragraph (a) above, obtains entire right, title and interest in and to an invention nor (2) pursuant to the provisions of paragraph (b) above, reserves a non-exclusive, irrevocable royalty-free license in the invention with power to grant licenses for all governmental purposes, the Government shall leave the

entire right, title and interest in and to the invention in the Government employee, subject to law * * *.

(b) *Executive Order No. 9865.* Executive Order No. 9865 provides in part:

1. All Government departments and agencies shall, whenever practicable, acquire the right to file foreign patent applications on inventions resulting from research conducted or financed by the Government * * *.

[21 FR 10377, Dec. 28, 1956, as amended at 31 FR 5291, Apr. 2, 1966]

§ 1.653 Delegation of authority.

The General Counsel is authorized to act for the Administrator of Veterans Affairs in matters concerning patents and inventions, unless otherwise required by law. The determination of rights to an invention as between the Government and the employee shall be made by the General Counsel, subject to the approval of the Commissioner, where required.

[31 FR 5291, Apr. 2, 1966]

§ 1.654 Invention owned by the Government.

Any invention owned by the Government under the criteria given in paragraph 1(a) of Executive Order 10096 (15 FR 389, 3 CFR, 1949–1953 Comp., p. 292) shall be protected by an application for a domestic patent and other necessary documents executed by the inventor (employee) prepared by or through the General Counsel, unless some other agency has primary interest or it is decided to dedicate the invention to the public. Such dedication requires approval of the Commissioner. Applications on behalf of the Government for foreign patents may be made if determined to be in the public interest. The payment of necessary expenses in connection with any application filed or patent obtained under this section by the Veterans Administration is authorized.

[31 FR 5291, Apr. 2, 1966]

§ 1.655 Government license in invention of employee.

If an invention is made by an employee as to which he is entitled to full ownership under paragraph 1(b) of Executive Order 10096 (15 FR 389, 3 CFR, 1949–1953 Comp., p. 292) subject to a nonexclusive, irrevocable, royalty-free license in the Government with power to grant sublicenses for all Governmental purposes, it shall be the duty of the employee to make application for a U.S. patent, to execute all necessary documents, and to diligently prosecute such application at his own expense in instances in which either the Veterans Administration determines (insofar as its interest is concerned), or the Commissioner of Patents or other agency advises (insofar as other Government interest is concerned), that such action is necessary to protect the interest of the Government. *Provided, however,* That if the employee states that he is unwilling or unable to do so, the filing of the patent application, the prosecution thereof and the payment of necessary fees and other expenses by the Veterans Administration may be authorized subject to reimbursement by the employee as determined by the General Counsel based on the respective interests of the employee and the Government, or by an interested Government agency pursuant to agreement with the Veterans Administration.

[31 FR 5291, Apr. 2, 1966]

§ 1.656 Information to be submitted by inventor.

In the case of an invention or believed invention, the inventor will prepare a statement for submission to his immediate superior. It will be submitted regardless of where the ownership is believed to exist. The statement will consist of two parts:

(a) One part of the statement will be a disclosure of the invention sufficient to permit the preparation of a patent application. It will include ordinarily drawings or blueprints which contain reference numerals, such numerals being crossed to an accompanying explanatory list or description of the parts or components of the invention as shown on the drawings or blueprints, accompanied further by a description of the construction and operation of the invention. Photographs of the invention may be included. The inventor should state pertinent prior art known to him, and set forth in detail

as clearly as possible the respects in which his invention differs.

(b) The other part of the statement will set forth the circumstances attending the making of the invention. It will include the full name and address of the inventor; the grade and title of his position; whether full time or part time; his duties at the time the invention was made; the facts pertinent to a determination whether the invention bore a direct relation to or was made in consequence of such official duties; whether there was, and if so, the terms of any special agreement or understanding with respect to use or manufacture of his invention; date of the invention; when and where it was conceived, constructed and tested; whether it was made entirely during working hours; whether there was a contribution by the Government of any of the following: Facilities; equipment; materials or supplies; funds; information; time or services of other Government employees on duty. If the invention has previously been disclosed, as for example by an article submitted for publication, or in consultation with a manufacturer or attorney, details will be given. In the case of an article, a copy will be attached if possible, or the citation given.

[21 FR 10377, Dec. 28, 1956, as amended at 31 FR 5291, Apr. 2, 1966]

§ 1.657 Transmittal of inventor's statement.

The inventor's immediate superior shall promptly review the statement of the employee for completeness and accuracy, and he shall certify that the employee's statement of circumstances attending the invention is or is not correct, giving reasons if pertinent. The file should then be submitted through the station head (or department heads or top staff officials in the case of Central Office employees) to the General Counsel together with comments and recommendations, including whether the invention is used or is likely to be used in the public interest, and any such additional information as may be deemed helpful or necessary. The General Counsel will assemble the evidence bearing upon this question.

[31 FR 5291, Apr. 2, 1966]

§ 1.658 Determination of rights.

The General Counsel will make a determination of rights, subject to review where required by the Commissioner. The determination may be that title is in the Government, that title is in the employee, or that the employee is entitled to commercial rights and the Government to a license, depending on the facts. The employee has a right of appeal to the Commissioner within 30 days from the determination of the General Counsel. The decision reached by the General Counsel or by the Commissioner, as the case may be, will be communicated to the employee.

[31 FR 5291, Apr. 2, 1966]

§ 1.659 Relationship to incentive awards program.

Procedures set out in the regulations concerning inventions by employees of the Veterans Administration are not affected by the submission or proposed submission of an employee suggestion or idea on an item which may be patentable. Consideration of an item for patentability and also for an incentive award may proceed simultaneously, usually on separate correspondence. An employee suggestion or copies and extracts of the file may be forwarded to the General Counsel by the reviewing or awarding authority, or by the station head, for patent consideration.

[31 FR 5291, Apr. 2, 1966]

§ 1.660 Patents of peculiar importance to the public service.

The rules of practice of the U.S. Patent Office provide for expediting consideration of applications for patents that are of peculiar importance to the public service, upon the request of department heads. Where the circumstances apparently justify such a request, the station head, department head or top staff official will so state.

[31 FR 5292, Apr. 2, 1966]

§ 1.661 Expeditious handling.

Submissions involving inventions should be made as promptly as possible in order to avoid delay which

might jeopardize title to the invention or impair the rights of the inventor or the Government. No patent may be granted where the invention has been in public use or publicly disclosed for more than one year before filing of a patent application.

[21 FR 10378, Dec. 28, 1956]

§ 1.662 Information to be kept confidential.

All information pertaining to inventions and pending patent applications is confidential, and employees having access to such information are forbidden to disclose or reveal the same except as required in the performance of their official duties.

[21 FR 10378, Dec. 28, 1956]

§ 1.663 Provisions of regulations made a condition of employment.

The provisions of the regulations concerning inventions by employees of the Veterans Administration shall be a condition of employment of all employees.

[21 FR 10378, Dec. 28, 1956]

§ 1.666 Licensing of Government-owned inventions.

The licensing of Government-owned inventions under Veterans Administration control and custody will be conducted pursuant to the regulations on the licensing of Government-owned inventions promulgated by the General Services Administration in 41 CFR Subpart 101-4.1. By mutual agreement, the Department of Health, Education, and Welfare will administer the licensing of such inventions.

[38 FR 34734, Dec. 18, 1973]

Appeals From Decisions of Contracting Officers

Authority: Sections 1.770 to 1.776 issued under secs. 1, 2, 68 Stat. 81, 72 Stat. 1114; 41 U.S.C. 321, 322, 38 U.S.C. 210.

Source: Sections 1.770 to 1.776 issued at 41 FR 24705, June 18, 1976, unless otherwise noted.

§ 1.770 Contract Appeals Board—establishment and jurisdiction.

(a) The Veterans Administration's Contract Appeals Board, referred to in §§ 1.770 through 1.776 as the Board, is established in the Office of the Administrator to consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the head of an agency or his duly authorized representative or board. In addition, the Board has jurisdiction over other matters assigned to it by the Administrator of Veterans Affairs. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Administrator.

(b) The Board is located in Washington, D.C., and its mailing address is: Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. 20420.

§ 1.771 Delegation of authority.

(a) The Board is delegated authority by the Administrator to hear and decide appeals in accordance with contract terms and the regulations in §§ 1.770 through 1.776 and to publish final decisions thereon. The Board and its individual members are delegated authority to conduct hearings, administer oaths and affirmations, take testimony and affidavits, order production of documents and other evidence and dismiss proceedings when warranted. The Board also has authority to perform such other functions as may be assigned by the Administrator.

(b) The Board is authorized to require Veterans Administration contracting officers and other Veterans Administration officials to furnish the Board with such information, technical data and other assistance as the Board may require in the performance of its duties.

(c) The Board is authorized to take official notice of facts within general knowledge and to decide all questions necessary for complete adjudication.

(d) When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issues. In the consideration of an

appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the questions of liability.

(e) There is no further administrative appeal within the Veterans Administration from decisions rendered by the Board.

§ 1.772 Composition of the Board.

The Board consists of a Chairman and members, all of whom shall be attorneys at law duly licensed by any State, Commonwealth, Territory, or the District of Columbia, in addition to clerical personnel. In general, the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board. Board members are designated as Administrative Judges and the Chairman is designated as Chief Administrative Judge.

§ 1.773 Policy and procedure.

(a) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(b) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of the rules in § 1.774 in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. The rules in § 1.774 will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(c) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(d) *Time, computation, and extensions.* (1) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(2) Except as otherwise provided by law, in computing any period of time prescribed by the rules in § 1.774 or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

(3) Requests for extensions of time from either party shall be made in writing and stating good cause therefor.

§ 1.774 Rules of the Board.

(a) *Rule 1; appeals, how taken.* Notice of an appeal must be in writing and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

(b) *Rule 2; notice of appeal, contents of.* A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract by number, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in paragraph (f) of this section (Rule 6) may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(c) *Rule 3; forwarding of appeals.* When a notice of appeal in any form has been received by the contracting officer, he or she shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contract-

ing officer will be promptly advised of its receipt and the contractor will be furnished a copy of §§ 1.770 through 1.776.

(d) *Rule 4; preparation, contents, organization, forwarding, and status of appeal file*—(1) *Duties of contracting officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board, through the Office of General Counsel an appeal file consisting of all documents pertinent to the appeal, including:

(i) The decision and findings of fact from which appeal is taken;

(ii) The contract including specifications and pertinent amendments, plans and drawings;

(iii) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(iv) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(v) Any additional information considered pertinent.

Within the same time specified in this subparagraph, the Office of General Counsel shall furnish the appellant a copy of each document transmitted to the Board, except those stated in paragraph (d)(1)(ii) of this section, as to which a list furnished appellant indicating specific contractual documents transmitted will suffice, and those stated in paragraph (d)(4) of this section.

(2) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he or she considers pertinent to the appeal, and furnishing two copies of such documents to the Government trial attorney.

(3) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(4) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he or she shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(5) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with paragraphs (m) and (t) of this section (Rules 13 and 20).

(e) *Rule 5; dismissal for lack of jurisdiction.* Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(f) *Rule 6; pleadings*—(1) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of his or her claims, alleging the basis, with appropriate reference to contract provisions for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular

form or formality is required. Upon receipt thereof, the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his or her complaint and the respondent shall be so notified.

(2) *Respondent.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Upon receipt thereof, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(g) *Rule 7; amendments of pleadings or record.* (1) The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(2) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his or her pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in paragraph (d) of this section (Rule 4), are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the documentation in paragraph (d) of this section (Rule 4) (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, *Provided,* however, That the objecting party may be granted a continuance if necessary to enable him or her to meet such evidence.

(h) *Rule 8; hearing—election.* Upon receipt of respondent's answer or the notice referred to in the last sentence of paragraph (f)(2) of this section (Rule 6), appellant shall advise the Board whether he or she desires a hearing as prescribed in paragraphs (q) through (y) of this section (Rules 17 through 25), or whether, in the alternative, he or she elects to submit his or her case on the record without a hearing, as prescribed in paragraph (k) of this section (Rule 11). In appropriate cases, the appellant shall also elect whether he or she desires the optional accelerated procedure prescribed in paragraph (l) of this section (Rule 12).

(i) *Rule 9; prehearing briefs.* Based on an examination of the documentation described in paragraph (d) of this section (Rule 4), the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to paragraph (h) of this section (Rule 8). In the absence of a Board requirement therefor, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

(j) *Rule 10; prehearing or presubmission conference.* (1) Whether the case is to be submitted pursuant to paragraph (k) of this section (Rule 11), or heard pursuant to paragraphs (q) through (y) of this section (Rules 17 through 25), the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before an Administrative

Judge or examiner of the Board for a conference to consider:

(i) The simplification or clarification of the issues;

(ii) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(iii) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(iv) The possibility of agreement disposing of all or any of the issues in dispute; and

(v) Such other matters as may aid in the disposition of the appeal.

(2) The results of the conference shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute part of the record.

(k) *Rule 11; submission without a hearing.* Either party may elect to waive a hearing and to submit his or her case upon the record before the Board as settled pursuant to paragraph (m) of this section (Rule 13). Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with paragraph (w) of this section (Rule 23).

(l) *Rule 12; optional accelerated procedure.* (1) In appeals involving $25,000 or less, either party may elect, in his or her notice of appeal, complaint, answer, or by separate correspondence or statement prior to commencement of hearing or settlement of the record, to have the appeal processed under a shortened and accelerated procedure. For application of this paragraph the amount in controversy will be determined by the sum of the amount claimed by either party against the other in the appeal proceeding. If no specific amount of claim is stated, a case will be considered to fall within this paragraph if the sum of the amounts which each party represents in writing that it could recover as a result of a Board decision favorable to it does not exceed $25,000. Upon such election, a case shall then be processed under this paragraph unless the other party objects and shows good cause why the substantive nature of the dispute requires processing under the Board's regular procedures and the Board sustains such objection. In cases proceeding under this paragraph, parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(2) Written decision by the Board in cases proceeding under this paragraph normally will be short and contain summary findings of fact and conclusions only. The Board will endeavor to render such decisions within 30 days after the appeal is ready for decision. Such decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or a designated member; except that in cases involving $5,000 or less where there has been a hearing, the single Administrative Judge presiding at the hearing may, in his or her discretion, at the conclusion of the hearing and after entertaining such oral arguments as he or she deems appropriate, render on the record oral summary findings of fact, conclusions and decision of the appeal. In the latter instance, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date from which the period for filing a motion for reconsideration under paragraph (cc) of this section (Rule 29) commences.

(3) Except as herein modified, the rules in this section otherwise apply in all respects.

(m) *Rule 13; settling the record.* (1) The record upon which the Board's decision will be rendered consists of the appeal file described in paragraph (d) of this section (Rule 4) and, to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing

briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(2) Except as the Board may otherwise order in its direction, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(3) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(n) *Rule 14; discovery—depositions—* (1) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(2) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(3) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(4) *Use as evidence.* No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instance, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(5) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(o) *Rule 15; interrogatories to parties, admission of facts, and production and inspection of documents—* (1) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted.

(2) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(3) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board

shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(p) *Rule 16; service of papers.* Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. Copies of complaints, answers and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

(q) *Rule 17; hearings, where and when held.* Hearings will ordinarily be held in the Washington, D.C. area, except that upon request seasonably made and upon good cause shown, the Board may set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance a hearing.

(r) *Rule 18; notice of hearings.* The parties shall be given at least 15 days, notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

(s) *Rule 19; unexcused absence of a party.* The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in paragraph (k) of this section (Rule 11).

(t) *Rule 20; nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding member or examiner in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member or examiner. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

(u) *Rule 21; examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board member or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may warn the witness that his or her statements may be subject to the provisions of 18 U.S.C. 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

(v) *Rule 22; copies of papers.* When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

(w) *Rule 23; posthearing briefs.* Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding member or examiner at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

(x) *Rule 24; transcript of proceedings.* Testimony and argument at hearings shall be reported verbatim,

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unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by the contract between the Government and the reporter.

(y) *Rule 25, withdrawal of exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

(z) *Rule 26: the appellant.* An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any State, Commonwealth, Territory, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

(aa) *Rule 27: the respondent.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or his or her attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

(bb) *Rule 28; decisions.* Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in paragraph (m) of this section (Rule 13).

(cc) *Rule 29; motion for reconsideration.* A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

(dd) *Rule 30; dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within 3 years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

(ee) *Rule 31; dismissal for failure to prosecute.* Whenever a record discloses the failure of either party to file documents required by the rules in this section, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

(ff) *Rule 23; ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communica-

tions concerning the Board's administrative functions or procedures.

(gg) *Rule 33; sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

§ 1.775 Miscellaneous provisions.

(a) *Limitations on awards.* The decision of the Board shall not be in an amount, if any, greater than that claimed in the proceedings before the Board nor shall a decision otherwise grant relief greater than that so claimed by the appellant.

(b) *Litigation.* The Board will not proceed with consideration of an appeal if the matter is the subject of a lawsuit to which the United States is a party, unless:

(1) The appellant files with the Board a certified copy of a court order staying or suspending further court proceedings pending completion of administrative action by the Board; and

(2) Clearance is obtained from the Department of Justice for further administrative consideration and final disposition of the appeal.

(c) *Claims pending before the Comptroller General of the United States.* The Board will not proceed with consideration of an appeal while the same matter is involved in a claim pending before the Comptroller General unless clearance is secured.

(d) *Notification by parties.* The parties will promptly notify the Board of any litigation pending or any claim filed in the General Accounting Office, involving any matter in an appeal.

(e) *Duties of contracting officers in remanded cases.* When an appeal is remanded to the contracting officer for implementation, the contracting officer shall upon accomplishment thereof inform the Board and furnish a copy of the documents evidencing the same.

§ 1.776 Effective date and applicability.

The rules in § 1.774 shall take effect on June 18, 1976. Except as otherwise directed by the Board, the rules in § 1.774 shall not apply to appeals which have been docketed prior to their effective date.

Part-Time Career Employment Program

Source: Sections 1.891 through 1.897 appear at 44 FR 55172, Sept. 25, 1979, unless otherwise noted.

§ 1.891 Purpose of program.

Many individuals in society possess great productive potential which goes unrealized because they cannot meet the requirements of a standard workweek. Permanent part-time employment also provides benefits to other individuals in a variety of ways, such as providing older individuals with a gradual transition into retirement, providing employment opportunities to handicapped individuals or others who requires a reduced workweek, providing parents opportunities to balance family responsibilities with the need for additional income, and assisting students who must finance their own education or vocational training. In view of this, the Veterans Administration will operate a part-time career employment program, consistent with the needs of its beneficiaries and its responsibilities.

(5 U.S.C. 3391 note)

§ 1.892 Review of positions.

Positions becoming vacant, unless excepted as provided by § 1.897, will be reviewed to determine the feasibility of converting them to part-time. Among the criteria which may be used when conducting this review are:

(a) Mission requirements.

(b) Workload.

(c) Employment ceilings and budgetary considerations.

(d) Availability of qualified applicants willing to work part time.

(e) Other criteria based on local needs and circumstances.

(5 U.S.C. 3392)

§ 1.893 Establishing and converting part-time positions.

Position management and other internal reviews may indicate that positions may be either converted from full-time or initially established as

part-time positions. Criteria listed in § 1.892 may be used during these reviews. If a decision is made to convert to or to establish a part-time position, regular position management and classification procedures will be followed.

(5 U.S.C. 3392)

§ 1.894 Annual goals and timetables.

An agencywide plan for promoting part-time employment opportunities will be developed annually. This plan will establish annual goals and set interim and final deadlines for achieving these goals. This plan will be applicable throughout the agency, but may be supplemented by field stations.

(5 U.S.C. 3392)

§ 1.895 Review and evaluation.

The part-time career employment program will be reviewed through semiannual reports submitted by field stations. Regular employment reports will be used to determined levels of part-time employment. This program will also be designated an item of special interest to be reviewed during personnel management reviews.

(5 U.S.C. 3392)

§ 1.896 Publicizing vacancies

When applicants from outside the Federal service are desired, part-time vacancies may be publicized through various recruiting means, such as:

(a) Federal Job Information Centers.
(b) State Employment offices.
(c) VA Recruiting Bulletins.

(5 U.S.C. 3392)

§ 1.897 Exceptions.

The administrator of Veterans Affairs, or designees, may except positions from inclusion in this program as necessary to carry out the mission of the agency.

(5 U.S.C. 3392)

STANDARDS FOR COLLECTION, COMPROMISE, SUSPENSION OR TERMINATION OF COLLECTION EFFORT, AND REFERRAL OF CIVIL CLAIMS FOR MONEY OR PROPERTY

AUTHORITY: Sections 1.900 to 1.906 issued under 72 Stat. 1114; 38 U.S.C. 210.

SOURCE: Sections 1.900 to 1.906 appear at 32 FR 2613, Feb. 8, 1967, unless otherwise noted.

§ 1.900 Prescription of standards.

The instructions contained in §§ 1.900 through 1.954 are issued pursuant to the Public Law 89-508 (Federal Claims Collection Act of 1966, 80 Stat. 308) and the joint regulations thereunder of the Comptroller General of the United States and the Attorney General of the United States, Title 4, Chapter II, Code of Federal Regulations. Except as provided in § 1.903, they constitute standards governing Veterans Administration collection, compromise, suspension or termination of collection effort, and the referral to the General Accounting Office and the Department of Justice for litigation of civil claims by the Veterans Administration for money or property.

§ 1.901 Omissions not a defense.

The standards set forth in §§ 1.900 through 1.954 shall apply to Veterans Administration handling of claims for money and property but the failure of the agency to comply with any provision of the standards shall not be available as a defense to any debtor.

§ 1.902 Fraud, antitrust and tax claims excluded.

The standards set forth in §§ 1.900 through 1.954 do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on violation of the antitrust laws. Only the Department of Justice has authority to compromise or terminate collection action on such claims. However, the standards will govern Veterans Administration handling of specific claims subsequent to Department of Justice notification that the alleged fraud, false claim, or misrepresentation does not warrant action by that department. The Veterans Administration has no authority to consider or compromise Federal tax claims.

§ 1.903 Settlement, waiver, or compromise under other statutory or regulatory authority.

Nothing in §§ 1.900 through 1.954 is intended to preclude Veterans Administration settlement, waiver, or compromise of claims under statutes other than the Federal Claims Collection Act of 1966, 80 Stat. 308. See, e.g., 38 U.S.C. 1820(a) (4) and (5) and 3102(a) and Public Law 87-693 (76 Stat. 593, 42 U.S.C. 2651-2653). Nor are §§ 1.900 through 1.954 intended to preclude Veterans Administration settlement, waiver, or compromise of claims under § 17.48(f) of this chapter for the cost of medical or hospital care furnished pursuant to § 17.47 (c)(1) or (d) of this chapter to persons who are entitled to hospital care or medical or surgical treatment or to reimbursement for all or part of the cost thereof by reason of "workmen's compensation" or "employer's liability" statutes, State or Federal; right to maintenance and cure in admiralty; or statutory or other relationships with third parties, giving rise to liability for damages because of negligence or other legal wrong.

§ 1.904 Conversion claims.

The instructions contained in §§ 1.900 through 1.954 are directed primarily to the recovery of money on behalf of the Government and the circumstances in which the Veterans Administration may dispose of claims for less than the full amount. In addition, the Veterans Administration will assert demands for the return of specific property or the payment of its value in cases of conversion.

§ 1.905 Subdivision of claims not authorized.

A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of less than $20,000, exclusive of interest, for the purpose of compromise or termination of collection action. Such a claim may not be subdivided to avoid the monetary ceiling established by Public Law 89-508 (Federal Claims Collection Act of 1966, 80 Stat. 308).

§ 1.906 Required administrative proceedings.

Nothing contained in §§ 1.900 through 1.954 is intended to foreclose the right of any debtor to appeal or administrative hearing provided by statute, contract, or applicable Veterans Administration Regulation.

Standards for Collection of Claims

Authority: Sections 1.910 to 1.921 issued under 72 Stat. 1114; 38 U.S.C. 210.

Source: Sections 1.910 to 1.921 appear at 32 FR 2613, Feb. 8, 1967, unless otherwise noted.

§ 1.910 Aggressive collection action.

The Veterans Administration will take aggressive action, on a timely basis with effective followup, to collect all claims for money or property arising from its activities.

§ 1.911 Demand for payment.

The Veterans Administration will make written demands for the payment of all debts which arise from its activities except in cases where immediate offset is made against current payments. The first demand will advise the debtor of the consequence of his failure to cooperate and of such rights to request waiver or further hearing as may exist in the particular case. Prompt response will be made to all communications from debtors. Where no Veterans Administration right to offset exists and the debtor fails to make satisfactory reply, second and third demands will be made at 30-day intervals unless it is apparent that further demand would be futile or unless prompt suit or attachment is required in anticipation of the departure of the debtor or debtors from the jurisdiction or his or their removal or transfer of assets or the running of the statute of limitations.

§ 1.912 Collection by offset.

The Veterans Administration will initiate collection by offset on claims which are liquidated or certain in amount and where the right to offset exists. When previous demand has been made, offset action will be taken when the debtor either agrees to such action or fails to make satisfactory re-

sponse to the first demand within 30 days. Collections by offset from persons receiving pay or compensation from the Veterans Administration will be effected over a period not greater than the period such pay or compensation may be expected to continue. See 5 U.S.C. 5514 and 38 U.S.C. 3101. Collection by offset against a judgment obtained by the debtor against the United States will be accomplished in accordance with the Act of March 3, 1875, 18 Stat. 481, as amended, 31 U.S.C. 227. The Veterans Administration will make full use of the cooperative services of other agencies in effecting collections including utilization of the Army Holdup List.

§ 1.913 Personal interview with debtor.

The Veterans Administration will, to the extent feasible, undertake personal interviews whenever requested by debtors and in other cases having regard for the amounts involved and the proximity of agency representatives to the debtors.

§ 1.914 Contact with debtor's employing agency.

When a debtor of the Veterans Administration is employed by another agency of the Federal Government or is a member of the Military establishment or the Coast Guard and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the Veterans Administration will contact the employing agency in an effort to arrange with the debtor for payment of the indebtedness by allotment or otherwise in accordance with section 206 of Executive Order 11222 of May 8, 1965 (30 FR 6469; 3 CFR 1965 Supp., pp. 130, 131).

§ 1.915 Suspension or revocation of eligibility.

Demands on debtors who are lenders, contractors, brokers, or other participants in Veterans Administration programs will include notification that failure to pay their debts within a reasonable time may be cause for suspension or disqualification to the extent authorized by law. Nothing in this section is intended to be in derogation of the provisions of 38 U.S.C. 1804(b) and 1804(d) as implemented by §§ 36.4331 and 36.4361 of this chapter. The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 will be reported to the Treasury Department at once. Prompt and appropriate Veterans Administration action will be taken upon receipt of Treasury Department notification that a surety's certificate of authority to do business with the Federal Government has been revoked or forfeited.

§ 1.916 Liquidation of collateral.

The Veterans Administration will exercise its rights to liquidate security or collateral and apply the proceeds to debts due it through use of a power of sale in the security instrument or a nonjudicial foreclosure if the debtor fails to pay his debt, within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or the particular circumstances require judicial foreclosure. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless such action is expressly required by statute or contract.

§ 1.917 Collection in installments.

The Veterans Administration will collect claims, with interest, where applicable, in one lump sum whenever possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. The size and frequency of installment payments will be governed by the size of the debt and the debtor's ability to pay, but should not extend more than 3 years or be less than $10 per month except in only the most unusual circumstances. The Veterans Administration will attempt to obtain an executed confess-judgment note comparable to Department of Justice Form USA 70a whenever the total amount of unsecured deferred installments exceeds $750. Other security for deferred payments may be accepted in appropriate cases. However, installment payments may be accepted notwithstanding the debtor's refusal to execute a confess-

judgment note or to give other security.

§ 1.918 Exploration of compromise.

The Veterans Administration will attempt to affect compromises in claims of $20,000 or less exclusive of interest in accordance with the standards set forth in §§ 1.930 through 1.937 in all cases in which it is ascertained that the debtor is financially unable to pay the full amount or in which the litigative risks or the costs of litigation dictate such action.

§ 1.919 Interest.

The Veterans Administration may forego prejudgment interest not mandated by statute, contract, or regulation as an inducement to voluntary payment. In such cases, demand letters will inform debtors that prejudgment interest will be collected if suit becomes necessary. When a debt is collected in installments and interest is included, the installment payments will first be applied to the payment of accrued interest and then to principle in accordance with the so called "U.S. Rule", except that on debts arising as a result of defaults on loans guaranteed, insured, or made pursuant to Title 38, United States Code, collections will be applied first to liquidate the principal of the debt, and then to interest obligation, calculated on the basis of declining principal balances without charging interest on interest balances. The foregoing provision of this section is applicable unless a different rule is prescribed by statute, contract, or regulation.

[33 FR 4140, Mar. 5, 1968]

§ 1.920 Documentation of collection action.

An appropriate file will be maintained for each claim completely documenting all Veterans Administration collection action and the bases for any compromise or for suspension or termination of collection action.

§ 1.921 Additional collection action.

Nothing in §§ 1.900 through 1.954 is intended to preclude the utilization of any other remedy available to the Veterans Administration.

STANDARDS FOR COMPROMISE OF CLAIMS

AUTHORITY: Sections 1.930 to 1.937 issued under 72 Stat. 1114; 38 U.S.C. 210.

SOURCE: Sections 1.930 to 1.937 appear at 32 FR 2614, Feb. 8, 1967, unless otherwise noted.

§ 1.930 Scope and application.

The standards contained in §§ 1.930 through 1.937 apply to the compromise by the Administrator of Veterans Affairs or his designee of claims of the Government which arise from the activities of the Veterans Administration, do not exceed $20,000 exclusive of interest, have not been referred to the General Accounting Office or the Department of Justice, and do not arise out of an exception made by the General Accounting Office in the account of an accountable officer. The $20,000 limitation does not apply to loan guarantee indebtedness under 38 U.S.C., Chapter 37.

§ 1.931 Inability to pay.

The Veterans Administration will attempt to compromise claims for less than the full amount when the debtor is clearly unable to pay the full amount within a reasonable time or the debtor refuses to pay in full and the Government appears unable to enforce full collection within a reasonable time. The compromise authority contained in §§ 1.930 through 1.937 will not be utilized to grant equitable relief denied under waiver authority. All compromise amounts will bear a reasonable relation to the amount realizable under enforced collection procedures considering the circumstances. Compromises payable in installments are discouraged. However, if payment of a compromise by installments is necessary, an agreement for the reinstatement of the prior indebtedness less sums paid thereon and acceleration of the balance due upon default in the payment of any installment should be obtained, together with security in the manner set forth in § 1.197, in every case in which this is possible. If the agency's files do not contain reasonably up-to-date credit information as a basis for assessing a compromise proposal such information may be obtained from the individ-

ual debtor by obtaining a statement executed under penalty of perjury showing the debtor's assets and liabilities, income and expense. Similar data may be obtained from corporate debtors by resort to balance sheets and such additional data as seems required.

§ 1.932 Litigative possibilities.

The Veterans Administration will attempt to compromise claims when there is a real doubt as to the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or bona fide dispute as to the facts. The amount accepted in compromise will fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight will be given the court costs which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. Cf. 28 U.S.C. 2412, as amended by Public Law 89-507, 80 Stat. 308.

§ 1.933 Cost of collecting claim.

The Veterans Administration will attempt to compromise claims when the cost of collection does not justify enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, having regard for the time required to effect collection. The cost of collection normally will be a proportionately greatly factor in the settlement of small claims.

§ 1.934 Joint and several liability.

When two or more debtors are jointly and severally liable, the Veterans Administration will proceed against each for the full amount. Care will be exercised that compromise with any one such debtor does not release the agency's claim against the remaining debtors or establish a morally binding precedent limiting their liabilities.

§ 1.935 Settlement for a combination of reasons.

The Veterans Administration may compromise specific claims for any combination of the reasons authorized in §§ 1.931 through 1.934.

§ 1.936 Further review of compromise offers.

The Veterans Administration may refer to the General Accounting Office or Department of Justice firm written offers from debtors when there is doubt whether the offers should be accepted.

§ 1.937 Restrictions.

The Veterans Administration will not accept either a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim. Tax-loss effects will be considered in negotiating compromises with business concerns.

Standards for Suspending or Terminating Collection Action

Authority: Sections 1.940 to 1.943 issued under 72 Stat. 1114; 38 U.S.C. 210.

Source: Sections 1.940 to 1.943 appear at 32 FR 2615, Feb. 8, 1967, unless otherwise noted.

§ 1.940 Scope and application.

The standards contained in §§ 1.940 through 1.944 apply to the suspension or termination of Veterans Administration collection action on claims which do not exceed $20,000 exclusive of interest and which have not been referred to the General Accounting Office or to the Department of Justice for litigation.

§ 1.941 Suspension of collection activity.

Suspension of collection activity constitutes merely the temporary cessation of collection effort. The Veterans Administration will suspend collection activity on all claims where the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim having consideration for its size and the amount which may be realized there-

on. Collection action may be suspended temporarily on a claim when the debtor owns no substantial equity in realty and is unable to make payments on the Government's claim or effect a compromise thereof at the time but his future prospects justify retention of the claim for periodic review and action and: (a) The applicable statute of limitations has been tolled or started running anew or (b) future collection can be effected by offset notwithstanding the statute of limitations. Suspension of collection activity as to a particular debtor will not defer the early liquidation of any security for the debt. Every effort will be made to locate missing debtors sufficiently in advance of the bar of any applicable statute of limitations to permit the timely filing of suit if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for entry of judgment will not be delayed because of his missing status.

§ 1.942 Termination of collection activity.

Termination of collection activity involves a final determination. Collection activity may be terminated on cases previously suspended. The Veterans Administration may terminate collection activity and consider closing the agency file on a claim which meets any one of the following standards:

(a) *Inability to collect any substantial amount.* It is clear that the Government cannot enforce collection of any significant sum from the debtor and future prospects for collection are remote.

(b) *Inability to locate debtor.* The debtor cannot be located, no security remains to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset are too remote.

(c) *Decease of debtor.* The debtor is determined to be deceased and the Government has no prospect of collecting from his estate.

(d) *Cost will exceed recovery.* The cost of further collection effort is likely to exceed the amount recoverable.

(e) *Claim legally without merit.* Collection action should be terminated on a claim whenever it is determined that the claim is legally without merit.

(f) *Claim cannot be substantiated by evidence.* The Veterans Administration will terminate collection action on once asserted claims because of lack of evidence or unavailability of witnesses only in cases in which court action appears the sole remaining recourse.

§ 1.943 Transfer of claims.

The Veterans Administration normally will refer claims to the General Accounting Office only when the amount exceeds $20,000 exclusive of interest or the particular circumstances indicate the capacity of that office to exert collection pressure not available to the Veterans Administration. Claims will be referred to the Department of Justice whenever required to renew a judgment or otherwise protect the interests of the Government.

Referrals to GAO or Justice Department for Litigation

Authority: Sections 1.950 to 1.954 issued under 72 Stat. 1114; 38 U.S.C. 210.

Source: Sections 1.950 to 1.954 appear at 32 FR 2615, Feb. 8, 1967, unless otherwise noted.

§ 1.950 Prompt referral.

The Veterans Administration will refer promptly to the General Accounting Office or to the Department of Justice as appropriate claims which are not compromised or on which collection action is not suspended or terminated in accordance with §§ 1.900 through 1.954. Due consideration will be given the timing of referrals in relation to any limitations on the timing of suits against debtors.

§ 1.951 Current address of debtor.

All referrals will include the current address of the debtor or the name and address of the agent for a corporation upon whom service may be made when such addresses are known to the Veterans Administration. Referrals in which the current address of any party is unknown will include a listing of all prior known addresses and a statement of the steps taken to locate each such party.

§ 1.952 Credit data.

(a) Every claim referred by the Veterans Administration to other authority will include reasonably current information concerning the debtor's ability to pay.

(b) Such credit data may take the form in order of preferences of:

(1) A commercial credit report.

(2) A Veterans Administration investigative report showing the debtor's assets and liabilities, income and expenses.

(3) An individual debtor's statement executed under penalty of perjury reflecting his assets and liabilities and income and expenses.

(c) Credit data will be omitted in referral actions for foreclosure action and in other cases where it is clearly irrelevant to the Government's case.

§ 1.953 Report of prior collection actions.

All Veterans Administration referrals of claims to the General Accounting Office or the Department of Justice will be supported by a brief summary of the collection efforts taken by the Veterans Administration together with an explanation for the omission of any collection action prescribed in §§ 1.910 through 1.921.

§ 1.954 Preservation of evidence.

The Veterans Administration will preserve documentary evidence relating to all claims asserted on its behalf until disposition is authorized under other Federal Regulation.

Regional Office Committees on Waivers and Compromises

Authority: 38 U.S.C. 1820(a)(4) and 3102; 5 U.S.C. 5584.

§ 1.955 Regional Office Committees on Waivers and Compromises.

(a) *Delegation of authority and establishment.* (1) Sections 1.955 et seq. are issued to implement 38 U.S.C. 1820(a)(4) and 3102, 31 U.S.C. 951-953 and 5 U.S.C. 5584. The duties, delegations of authority and all actions required of the Committee on Waivers and Compromises, are to be accomplished under the direction of, and authority vested in, the Director of the regional office.

(2) There is established in each regional office, a Committee on Waivers and Compromises to perform the duties and assume the responsibilities delegated by §§ 1.956 and 1.957. The term "regional office", as used in §§ 1.955 et seq., includes VA Medical and Regional Office Centers and VA Centers where such are established.

(b) *Committee on Waivers and Compromises*—(1) *Composition.* The Committee shall consist of a Chairperson and five members at regional offices having loan guaranty activities or a Chairperson and four members at other regional offices. Members shall be selected so that in each of the debt claims activities of compensation, pension, education, insurance, loan guaranty (at offices having such activities), and finance, there is at least one member with special competence. An alternate Chairperson and an unlimited number of alternate members may be designated and used in place of Committee member(s), or as panel members (see paragraph (c) of this section), whenever needed.

(2) *Selection.* The Director shall designate the employees to serve as Chairperson, members and alternates. Except upon specific authorization of the Chief Benefits Director, when workload warrants a full-time committee, such designation will be part-time additional duty upon call of the Chairperson.

(3) *Control and staff.* The Division Chief of the Fiscal activity is accountable for the administrative control of the Committee functions. The quality control of the Committee and its professional and clerical staff is the responsibility of the Chairperson.

(4) *Overall control.* The Controller is delegated complete management authority, including planning, policy formulation, control, coordination, supervision and evaluation of Committee operations.

(c) *Panels.* When a claim is properly referred to the Committee, the Chairperson shall ordinarily designate from members and/or alternates, a panel of three (of whom the Chairperson may be one), to consider and determine the action to be taken. One person from this panel shall be specially qualified in the program field in which the debt

arose. If their panel decision is unanimous, it will be the Committee decision. Otherwise, the case will be decided by the entire membership of the Committee (i.e., either six or five persons as provided in paragraph (b)(1), of this section) and the majority vote of the Committee shall determine the decision. In such cases the Chairperson shall not vote except when necessary on four-member committees to break a tie.

(d) *Single signature authority.* Where a request is for waiver of collection of a debt of $500 or less, exclusive of interest, the Chairperson shall designate from members and/or alternates one person, with special competence in the program area where the debt arose, to consider the request. His/her signature alone to the decision will suffice. In compromise cases, however, three-person panels are always required regardless of the amount of the debt. (38 U.S.C. 210(c)(1)).

[44 FR 59905, Oct. 17, 1979]

§ 1.956 Jurisdiction.

(a) The regional office Committees are authorized, except as to determinations under § 2.6(e)(4)(i) of this chapter where applicable, to consider and determine as limited in §§ 1.955 et seq., settlement, compromise and/or waiver concerning the following debts and overpayments:

(1) Arising out of operations of the Department of Veterans Benefits:

(i) Overpayment or erroneous payments of pension, compensation, dependency and indemnity compensation, burial allowances, plot allowance, subsistence allowance, education (includes debts from work study and education loan defaults as well as from other overpayments of educational assistance benefits) or insurance benefits, clothing allowance and automobile or other conveyance and adaptive equipment allowances.

(ii) Debts arising out of the loan program under 38 U.S.C. ch. 37 after liquidation of security, if any.

(iii) Such other debts as may be specifically designated by the Chief Benefits Director.

(2) Arising out of operations of the Department of Medicine and Surgery:

(i) Debts resulting from services furnished in error (§ 17.62(a) of this chapter).

(ii) Debts resulting from services furnished in a medical emergency (§ 17.62(b) of this chapter).

(iii) Settlement of breached career residency contracts.

(iv) Other claims arising in connection with transactions of the Department of Medicine and Surgery (§ 17.64(c) of this chapter).

(3) Claims for erroneous payment of pay and allowances made to employees (section 5584, title 5, United States Code).

(b) The Chief Benefits Director may, at his or her discretion, assume original jurisdiction and establish an ad hoc Board to determine a particular issue arising within this section. (38 U.S.C. 210(c)(1)).

[39 FR 26400, July 19, 1974, as amended at 44 FR 59905, Oct. 17, 1979]

§ 1.957 Committee authority.

(a) *Regional office committee.* On matters covered in § 1.956, the regional office Committee is authorized to determine the following issues:

(1) *Waivers.* A decision may be rendered to grant or deny waiver of collection of a debt in the following overpayment categories:

(i) Loan guaranty program (38 U.S.C. 3102(b)). Committees may consider waiver of the indebtedness of a veteran or spouse resulting from: (A) The payment of a claim under the guaranty or insurance of loans, (B) the liquidation of direct loans, (C) the liquidation of loans acquired under § 36.4318, and (D) the liquidation of vendee accounts. The phrase "veteran or spouse" includes a veteran-borrower, veteran-transferee, a veteran-purchaser on a vendee account, a former spouse or surviving spouse of a veteran.

(ii) Other than loan guaranty program. (38 U.S.C. 3102(a))

(iii) Services erroneously furnished. (§ 17.62(a))

(iv) Erroneous payment of pay and allowances. (5 U.S.C. 5584)

(2) *Compromises*—(i) *Loan program debts.* Accept or reject a compromise offer irrespective of the amount of the

debt (loan guaranty matters under 38 U.S.C. ch. 37, are unlimited as to amount).

(ii) *Other than loan program debts (38 U.S.C. 951-953).* (A) Accept or reject a compromise offer on a debt which exceeds $1,000 but which is not over $20,000 (both amounts exclusive of interest).

(B) Accept or reject a compromise offer on a debt of $1,000 or less, exclusive of interest, which is not disposed of by the Chief, Fiscal activity or the Chief, Centralized Accounts Receivable Division pursuant to paragraph (b) of this section.

(3) *Breached career residency contracts.* Final settlement of any breached career residency contract in which terms are different than those provided in the contract, which will result in the payment of less than liquidated value or in an extension of time in which to pay damages.

(b) *Chief of the Fiscal Activity and the Chief, Centralized Accounts Receivable Division.* The Chief of the Fiscal activity at both Department of Veterans Benefits and Department of Medicine and Surgery offices and the Chief, Centralized Accounts Receivable Division have authority, as to debts arising within their jurisdictions, to:

(1) Suspend or terminate collection action on all debts of $20,000 or less, exclusive of interest.

(2) On other than loan guaranty program debts under 38 U.S.C. chapter 37, accept compromise offers of 50 percent or more of a total debt not in excess of $1,000, exclusive of interest, regardless of whether or not there has been a prior denial of waiver.

(3) On other than loan guaranty program debts under 38 U.S.C. chapter 37, reject any offer of compromise of a total debt not in excess of $1,000, exclusive of interest, regardless of whether or not there has been a prior denial of waiver. (38 U.S.C. 210(c)(1)).

[44 FR 59906, Oct. 17, 1979]

§ 1.958 Finality of decisions.

A decision by the regional office Committee operating within the scope of its authority, denying waiver of all or a part of an overpayment is subject to appeal. There is no right of appeal from a decision rejecting a compromise offer. (38 U.S.C. 210(c)(1)).

[44 FR 59906, Oct. 17, 1979]

§ 1.959 Records and certificates.

The Chairperson of the Committee shall execute or certify any documents pertaining to its proceedings. He/she will be responsible for maintaining needed records of the transactions of the Committee and preparation of any administrative or other reports which may be required. (38 U.S.C. 210(c)(1)).

[44 FR 59906, Oct. 17, 1979]

§ 1.960 Legal and technical assistance.

Legal questions involving a determination under § 2.6(e)(4) of this chapter will be referred to the District Counsel for action in accordance with delegations of the General Counsel, unless there is an existence a General Counsel's opinion or an approved District Counsel's opinion dispositive of the controlling legal principle. As to matters not controlled by § 2.6(e)(4) of this chapter, the Chairperson of the regional office Committee or at his/her instance, a member, may seek and obtain advice from the District Counsel on legal matters within his/her jurisdiction and from other division chiefs in their areas of responsibility, on any matter properly before the Committee. Guidance may also be requested from the Central Office staff. (38 U.S.C. 210(c)(1)).

[44 FR 59906, Oct. 17, 1979]

§ 1.961 Releases.

On matters within its jurisdiction, the Committee may authorize the release of any right, title, claim, lien or demand, however acquired, against any person obligated on a loan guaranteed, insured, or made by the Veterans Administration under the provisions of 38 U.S.C. ch. 37, or on an acquired loan, or on a vendee account.

[39 FR 26400, July 19, 1974]

§ 1.962 Waiver of overpayments.

The term "overpayment" means payments made and determined to be erroneous, indebtedness resulting from work study and education loan

defaults, indebtedness resulting from services erroneously furnished and indebtedness of a veteran-borrower or veteran-transferee under the loan guaranty program or the indebtedness of the spouse under laws administered by the Veterans Administration.

(a) Benefits subject to waiver include indebtedness due the Veterans Administration because of or in connection with hospitalization, domiciliary care, or treatment of a veteran, a person who claimed he or she was a veteran, or a person to whom such benefits were granted on the assumption that he or she was an eligible veteran.

(b) In any case where there is an indication of fraud or misrepresentation of a material fact on the part of the debtor or any other party having an interest in the claim, action on a request for waiver will be deferred pending appropriate disposition of the matter. However, the existence of a prima facie case of fraud shall, nevertheless, entitle a claimant to an opportunity to make a rebuttal with countervailing evidence; similarly, the misrepresentation must be more than non-willful or a mere inadvertence. The Committee may act on a request for waiver concerning such debts, after the District Counsel has determined that prosecution is not indicated, or the Department of Justice has notified the Veterans Administration that the alleged fraud or misrepresentation does not warrant action by that department, or the Department of Justice or the appropriate United States Attorney specifically authorized action on the request for waiver. (38 U.S.C. 210(c)(1)).

[39 FR 26400, July 19, 1974, as amended at 44 FR 59906, Oct. 17, 1979]

§ 1.963 Waiver: other than loan guaranty.

(a) *General.* Recovery of overpayments of any benefits made under laws administered by the Veterans Administration shall be waived if recovery of the indebtedness from the payee who received such benefits would be against equity and good conscience.

(b) *Application.* Request for waiver of an overpayment will be considered only if received within 2 years following the date of notice of the indebtedness by the Veterans Administration to the payee.

(c) *Third persons.* Waiver of recovery may be authorized, if warranted, where Veterans Administration payments have come into the possession of a person other than the person entitled. (38 U.S.C. 210(c)(1)).

[39 FR 26400, July 19, 1974, as amended at 44 FR 59906, Oct. 17, 1979]

§ 1.963a Waiver: erroneous payment of pay and allowances.

(a) Pay is defined in 4 CFR 91.2 to mean salary, wages, pay, compensation, emoluments and remuneration for services. It includes, but is not limited to, overtime pay; night, Sunday standby, irregular and hazardous duty differential; pay for Sunday and holiday work; payment for accumulated and accrued leave, and severance pay. It does not include expenses of travel and transportation or expenses of transportation of household goods.

(b) Allowances as they relate to an employee include, but are not limited to, payments for quarters, uniforms, and overseas cost of living expenses, but exclude travel and transportation expenses and relocation allowances. All requests for waiver of salary overpayments and allowances shall be referred for consideration of waiver before any determinations are made as to compromise or suspension or termination of collection action as follows:

(1) If the erroneous payment of pay or allowances was not more than $500 in the aggregate, the request for waiver shall be referred to the Chief of the Fiscal activity for review and necessary development before transmittal to the Committee on Waivers and Compromises for consideration.

(2) If the erroneous payment of pay or allowances was more than $500 in the aggregate:

(i) The Committee on Waivers and Compromises only has authority to deny waiver of collection of the entire amount of the debt.

(ii) Otherwise, the request for waive, after review and necessary development, shall be referred to the VA Controler for transmittal to the General

Accounting Office for consideration of full or partial waiver.

(c) Waiver action may not be taken on claims arising out of erroneous payments of pay or allowances made to or in behalf of an employee unless:

(1) Application for waiver is submitted within 3 years immediately following the date on which the erroneous payment of pay was discovered, or

(2) Application for waiver is submitted within 3 years immediately following the date on which the erroneous payment of allowances was discovered, or October 2, 1975, whichever is later.

(d) Claims arising out of erroneous payment of pay or allowances may be waived in whole or part whenever collection would be against equity and good conscience and not in the best interests of the United States. Generally those criteria will be met by a finding that the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. The foregoing elements, instead of the elements set forth in § 1.965, will be applied to waiver consideration of erroneous payment of pay and allowances to an employee.

(e) There shall be no right of appeal to the Board of Veterans Appeals from a determination made under this section denying a waiver of erroneous payment of pay or allowances. Denial of a waiver of erroneous payment of pay and allowances may be appealed to the General Accounting Office (GAO) in accordance with procedures established by that agency and the Veterans Administration. (38 U.S.C. 210(c)(1)).

[39 FR 26400, July 19, 1974, as amended at 44 FR 59906, Oct. 17, 1979]

§ 1.964 Waiver; loan guaranty.

(a) *General.* An indebtedness of a veteran or the indebtedness of the spouse may be waived only when both of the following factors are determined to exist:

(1) Following default there was a loss of the property which constituted security for the loan guaranteed, insured or made under chapter 37 of title 38, United States Code; and

(2) Collection of such indebtedness would be against equity and good conscience.

(b) *Spouse.* The waiver of a veteran's indebtedness shall inure to the spouse of such veteran insofar as concerns said indebtedness, unless the obligation of the spouse is specifically excepted. However, the waiver of the indebtedness of the veteran's spouse shall not inure to the benefit of the veteran unless specifically provided for in the waiver decision.

(c) *Surviving spouse or former spouse.* A surviving spouse of a veteran or the former spouse of a veteran may be granted a waiver of the indebtedness provided the requirements of paragraph (a) of this section are met.

(d) *Preservation of Government rights.* In cases in which it is determined that waiver may be granted, the action will take such form (covenant not to sue, or otherwise) as will preserve the rights of the Government against obligors other than the veteran or the spouse.

(e) *Application.* There is no time limit for filing an application for waiver of indebtedness under this section.

(f) *Exclusion.* Except as otherwise provided in this section, the indebtedness of a nonveteran obligor under the loan program is excluded from waiver. (38 U.S.C. 210(c)(1)).

[39 FR 26400, July 19, 1974, as amended at 44 FR 59907, Oct. 17, 1979]

§ 1.965 Application of standard.

(a) The standard "Equity and Good Conscience", will be applied when the facts and circumstances in a particular case indicate a need for reasonableness and moderation in the exercise of the Government's rights. The decision reached should not be unduly favorable or adverse to either side. The phrase "equity and good conscience" means arriving at a fair decision between the obligor and the Government. In making this determination, consideration will be given to the following elements, which are not intended to be all inclusive:

(1) *Fault of debtor.* Where actions of the debtor contribute to creation of the debt.

(2) *Balancing of faults.* Weighing fault of debtor against Veterans Administration fault.

(3) *Undue hardship.* Whether collection would deprive debtor or family of basic necessities.

(4) *Defeat the purpose.* Whether withholding of benefits or recovery would nullify the objective for which benefits were intended.

(5) *Unjust enrichment.* Failure to make restitution would result in unfair gain to the debtor.

(6) *Changing position to one's detriment.* Reliance on Veterans Administration benefits results in relinquishment of a valuable right or incurrence of a legal obligation.

(b) In applying this single standard for all areas of indebtedness, the following elements will be considered, any one of which, if found, will preclude the granting of waiver:

(1) Fraud or misrepresentation of a material fact (see § 1.962(b)).

(2) *Material fault.* The inexcusable commission or omission of an act that directly results in the creation of a debt to the Government.

(3) *Lack of good faith.* Absence of an honest intention to abstain from taking unfair advantage of the holder and/or the Government.

[39 FR 26400, July 19, 1974]

§ 1.966 Scope of waiver decisions.

(a) Decisions will be based on the evidence of record. A hearing may be held at the request of the claimant or his/her representative. No expenses incurred by a claimant, his representative, or any witness incident to a hearing will be paid by the Veterans Administration.

(b) A regional office Committee may:

(1) Waive recovery as to certain persons and decline to waive as to other persons whose claims are based on the same veteran's service.

(2) Waive or decline to waive recovery from specific benefits or sources, except that:

(i) There shall be no waiver of recovery out of insurance of an indebtedness secured thereby; i.e., an insurance overpayment to an insured. However, recovery may be waived of any or all of such indebtedness out of benefits other than insurance then or thereafter payable to the insured.

(ii) There shall be no recovery, by withholding or setoff against benefits payable under laws administered by the Veterans Administration, of an indebtedness arising out of any loan under the loan guaranty program made to, assumed by, or guaranteed or insured on account of the debtor, unless the written consent of the debtor is first obtained. (38 U.S.C. 210(c)(1)).

[39 FR 26400, July 19, 1974, as amended at 44 FR 59907, Oct. 17, 1979]

§ 1.967 Refunds.

(a) Voluntary payments and offsets whether voluntary, or involuntary, made from Veterans Administration benefits on or after the date of receipt by the Veterans Administration of a request for waiver will be refunded if waiver is granted, except as provided in paragraph (b) of this section.

(b) Refund of payments made on a loan guaranty indebtedness will not be made when only a part of the debt is waived or when collection of the balance of the indebtedness by the Veterans Administration from obligors, other than the husband or wife of the person requesting waiver, will be adversely affected.

(c) Amounts which have been recovered by the U.S. Government prior to the date of receipt by the Veterans Administration of a request for waiver, will not be refunded and will be excluded from waiver. Where recovery is made by offset or recoupment from a check(s) of a running award, the date of recovery is the date of issuance of the check from which the offset is made; or in the case of total recoupment the date of recovery is the date on which the check would have been issued. However, any amounts repaid because of erroneous payment of pay or allowances to employees will be considered for waiver action (regardless of date of request as long as such is timely in accordance with § 1.963a(c)) and, if waived, refund will be made to the employee, provided application for

refund is made no later than 2 years following the date of waiver. (38 U.S.C. 210(c)(1)).

[39 FR 26400, July 19, 1974, as amended at 44 FR 59907, Oct. 17, 1979]

§ 1.968 [Reserved]

§ 1.969 Revision of waiver decisions.

(a) *Jurisdiction.* A decision involving waiver may be reversed or modified on the basis of new and material evidence, fraud, a change in law or interpretation of law specifically stated in a Veterans Administration issue, or clear and unmistakable error shown by the evidence in file at the time the prior decision was rendered by the same or any other regional office Committee.

(b) *Finality of decisions.* Except as provided in paragraph (a) of this section, a decision involving waiver rendered by the Committee having jurisdiction is final, subject to the provisions of:

(1) Sections 3.104(a), 19.153 and 19.154 of this chapter as to finality of decisions;

(2) Section 3.105 (a) and (b) of this chapter as to revision of decisions, except that the Central Office staff may postaudit or make an administrative review of any decision of a regional office Committee;

(3) Sections 3.103, 19.113 and 19.114 of this chapter as to notice of disagreement and the right of appeal;

(4) Section 19.124 of this chapter as to the filing of administrative appeals and the time limits for filing such appeals.

(c) *Difference of opinion.* Where reversal or amendment of a decision involving waiver is authorized under § 3.105(b) of this chapter because of a difference of opinion, the effective date of waiver will be governed by the principle contained in § 3.400(h) of this chapter. (38 U.S.C. 210(c)(1)).

[44 FR 59907, Oct. 17, 1979]

§ 1.970 Standards for compromise.

Decisions of the Committee respecting acceptance or rejection of a compromise offer shall be in conformity with the standards in §§ 1.900 through 1.937. In loan guaranty cases the offer of a veteran or other obligor to effect a compromise must relate to an indebtedness established after the liquidation of the security, if any, and shall be reviewed by the Committee. An offer to effect a compromise may be accepted if it is deemed advantageous to the Government. A decision on an offer of compromise may be revised or modified on the basis of any information which would warrant a change in the original decision. (38 U.S.C. 210(c)(1)).

[44 FR 59907, Oct. 17, 1979]

PART 2—DELEGATIONS OF AUTHORITY

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§§ 2.9—2.49 [Reserved]
2.50 Department, staff office, and field station heads are authorized to designate employees to certify copies of records and papers in the custody of the Veterans Administration.
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2.52 Delegation of authority to certain employees to exercise certain powers and functions of the Administrator with respect to the guaranty or insurance of loans. The authority hereby delegated to these employees may, with the approval of the Chief Benefits Director be redelegated.

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2.53 Delegation of authority to certain employees to exercise certain powers and functions of the Administrator with respect to assisting eligible veterans to acquire specially adapted housing.

2.54 Delegation of authority to certain employees to exercise the power of the Administrator to waive procedural (nonsubstantive) requirements of the direct loan regulations.

2.55 Delegation of authority to certain employees to exercise certain powers and functions of the Administrator with respect to the making of direct loans. The authority hereby delegated to these employees may, with the approval of the Chief Benefits Director, be redelegated.

2.56 Directors of Veterans Administration hospitals authorized to appoint boards of medical officers, consisting of at least three qualified physicians, one of whom must be qualified in treatment of mental disorders, to determine whether members of uniformed services who are being furnished medical care in our hospitals are mentally capable of managing their own affairs.

2.57 Chief Attorneys authorized to release funds from Personal Funds of Patients for the needs of veterans and their dependents including amounts fixed by statute or valid administrative regulations as the cost of current maintenance of veterans in public institutions other than Veterans Administration institutions.

2.62 The Contract Appeals Board authorized by Administrator to hear and decide appeals in accordance with contract terms and regulations in §§ 1.770 through 1.776 and publish final decisions thereon.

2.63 The Contract Appeals Board and its individual members authorized to conduct hearings, administer oaths and affirmations, take testimony and affidavits, order production of documents and other evidence and dismiss proceedings when warranted. The Board also authorized to perform other functions as may be assigned by Administrator.

2.63a The Contract Appeals Board authorized to require Veterans Administration contracting officers and other Veterans Administration officials to furnish the Board with such information, technical data and other assistance as the Board may require in the performance of its duties.

2.64 The Contract Appeals Board authorized to take official notice of facts within general knowledge and to decide all questions necessary for complete adjudication of appeals.

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2.65 The Contract Appeals Board may, in its discretion, hear, consider and decide all questions of law necessary for the complete adjudication of issues when appeal is taken pursuant to disputes clause in contract which limits appeals to disputes concerning questions of fact.

2.65a The Contract Appeals Board may make findings of fact with respect to a claim without expressing an opinion on the questions of liability should it appear that a claim is involved which is not cognizable under the terms of the contract.

2.66 Chairman and Vice Chairman, Board of Veterans Appeals, in addition to authority vested by law, Veterans Administration regulations and manuals, delegated authority to authorize assumption of appellate jurisdiction of adjudicative determination which has not become final; to authorize administrative action on adjudicative determination which has become final by appellate decision or failure to timely appeal; and to authorize central office investigations of matters before the Board.

2.67 Chief Benefits Director and supervisory or adjudicative personnel within jurisdiction of Department of Veterans Benefits designated by him authorized to make findings and decisions under applicable laws, regulations, precedents, and instructions, as to entitlement of claimants to benefits under all laws administered by Veterans Administration governing payment of monetary benefits to veterans and their dependents, within jurisdiction of compensation and pension service.

2.67a Chief Benefits Director delegated authority to establish annual income limitations for the purposes of § 3.251(a)(2) based on service defined in § 3.8 (b), (c), or (d) at a rate in Philippine pesos equivalent to $0.50 for each dollar.

2.68 [Reserved]

2.68a Director, Compensation and Pension Service and personnel of that service designated by him authorized to determine whether claimant or payee has forfeited right to gratuitous benefits or to remit a prior forfeiture pursuant to provisions of 38 U.S.C. 3503 or 3504.

2.69 Chief Benefits Director or Director, Compensation and Pension Service, upon field station submission, authorized to approve on basis of certain criteria, extra-schedular evaluation commensurate with average earning capacity impairment due exclusively to service-connected disability or disabilities in exceptional case where schedular evaluations inadequate.

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2.70 Adjudication Officer, or where regular schedular standards are met as of date of rating decision, the rating board, authorized to approve on an extra-schedular basis a permanent and total disability rating for pension purposes.

2.71[1] Delegation of authority to certain employees to exercise certain powers and functions of the Administrator with respect to the sale of loans with guaranty of payment.

2.72 Chief Medical Director authorized to exercise powers and functions of Administrator with respect to maintenance and operation of Veterans Canteen Service.

2.73 Chief Medical Director delegated authority to designate Assistant Chief Medical Director for Administration and Facilities to administer overall operation of Veterans Canteen Service and to designate selected employees of Veterans Canteen Service to perform functions described in 38 U.S.C. Ch. 75, to effectively maintain and operate Veterans Canteen Service.

2.74 Field personnel in Office of Veterans Services Division and other employees who are qualified and designated by Field Station Director are authorized, when assigned, to conduct investigations (field examinations) and examine witnesses upon any matter within jurisdiction of Veterans Administration, to take affidavits, to administer oaths and affirmations, to certify copies of public or private documents and to aid claimants in preparation of claims.

2.75 The General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), The Deputy Assistant General Counsel of said Staff Group, and the District Counsel and those acting for them are delegated authority to settle and pay a claim for not more than $15,000 made by a civilian officer or employee of the Veterans Administration for damage to, or loss of, personal property incident to such person's service, on behalf of the Administrator, and such settlement shall be final and conclusive.

2.76 Chief Benefits Director and supervisory or adjudicative personnel within jurisdiction of education and rehabilitation service designated by him authorized to make findings and decisions under 38 U.S.C. Ch. 31 and applicable regulations, precedents and instructions, as to vocational rehabilitation services for disabled veterans.

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2.77 Managers of regional offices and center directors authorized to negotiate and approve contracts with educational institutions and other approved counseling agencies for purpose of providing educational and vocational counseling to persons referred for such services by Veterans Administration.

2.78 Except as otherwise provided, Chief Benefits Director and supervisory or adjudicative personnel within jurisdiction of Education and Rehabilitation Service designated by him delegated authority to make findings and decisions under 38 U.S.C. Chapters 34, 35, and 36 and applicable regulations, precedents and instructions, as to programs of education or special restorative training.

2.79 Chief Benefits Director and the Director, Education and Rehabilitation Service are delegated authority to enter into agreements for reimbursement of State approving agencies under § 21.4153 of this chapter.

2.80 Director, Education and Rehabilitation Service is delegated authority to waive penalties for conflicting interests as provided by § 21.4005 of this chapter.

2.81 Director, Education and Rehabilitation Service is delegated authority to exercise the functions otherwise required of State approving agencies, under § 21.4150(c) of this chapter.

2.82 Director, Education and Rehabilitation Service is delegated authority to approve courses under § 21.4250(c) of this chapter.

2.83 General Counsel authorized to act for Administrator of veterans affairs in matters concerning patents and inventions, unless otherwise required by law.

2.84 When in the interest of the Service and when administratively feasible, Chief Benefits Director or his designee is authorized to enter into an agreement with another Federal agency, which is authorized to furnish quarters, to provide living quarters, including heat, fuel, and light, in a Government-owned or rented building, for Veterans Administration employees permanently stationed in a foreign country under the provisions of 31 U.S.C. 686.

2.85 Chief Benefits Director and/or Assistant Director for Insurance authorized to make any determinations required under § 9.22 of this chapter relative to Servicemen's Group Life Insurance and Veterans' Group Life Insurance.

2.86 Chief Benefits Director authorized to act for administrator in making determinations in connection with a borrower's application for assistance in securing correction of structural defects.

[1]Appears as § 2.69 at 27 FR 2685, Mar. 22, 1962.

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2.87 Chief Benefits Director and his designee delegated authority to take any necessary action as to programs of vocational rehabilitation, education, or special restorative training under 38 U.S.C. chapters 31, 34, 35, and 36 for the purpose of securing evidence of voluntary compliance directly or through the agencies to whom the Administrator has delegated responsibility for various schools or training establishments to implement Part 18 of this chapter.

2.90 Chief Benefits Director delegated responsibility for obtaining evidence of voluntary compliance from recognized national organizations whose representatives are afforded space and office facilities in field stations under his jurisdiction.

2.91 Chief Medical Director delegated responsibility for obtaining evidence of voluntary compliance implementing the provisions of Title VI, Civil Rights Act of 1964, in connection with payments to State homes, with State home facilities for furnishing nursing home care, and from recognized national organizations whose representatives are afforded space and office facilities in field stations under his jurisdiction.

2.92 General Counsel delegated responsibility, upon receipt of information from the Chief Benefits Director, the Chief Medical Director, or the designee of either of them, that compliance cannot be secured by voluntary means, of forwarding to the recipient or other person the notice required by § 18.9(a) of this chapter, and also is delegated responsibility of representing the agency in all proceedings resulting from such notice.

2.93 Chief Medical Director is delegated authority to enter into sharing agreements authorized under provisions of 38 U.S.C. 5053 and § 17.210 of this chapter and which may be negotiated pursuant to provisions of 41 CFR 8-3.204(c); contracts with medical schools, clinics and any other group or individual capable of furnishing such services to provide scarce medical specialist services at VA facilities (including, but not limited to, services of physicians, dentists, nurses, physicians' assistants, dentists' assistants, technicians, and other medical support personnel); and when a sharing agreement or contract for scarce medical specialist services is not warranted, contracts authorized under the provisions of 38 U.S.C. 213 for medical and ancillary services.

Sec.

2.94 Director of VA hospital, domiciliary or outpatient clinic, or his designated contracting officer, is authorized to enter into arrangements authorized under provisions of 38 U.S.C. 213 for providing medical services on a fee basis or on an individually authorized basis subject to limitations in § 17.53 of this chapter; contracts or arrangements on individually authorized basis pursuant to § 17.50b of this chapter to provide care in public and private hospitals; and contracts authorized by 38 U.S.C. 620 for furnishing nursing home care in community facilities.

2.95 Delegation of authority to certain employees to exercise the power of the Administrator to waive stated procedural (nonsubstantive) requirements of the mobile home guaranty regulations.

2.96 Delegation of authority to certain employees to exercise certain powers and functions of the Administrator with respect to the guaranty of mobile home loans. The authority hereby delegated to these employees may, with the approval of the Chief Benefits Director, be redelegated.

2.97 Chief Benefits Director delegated responsibility to enter into agreement with Federal Trade Commission to utilize its services and facilities to carry out investigations and make determinations as to enrollment of eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive or misleading either by actual statement, omission, or intimation.

2.98 Delegation of authority to Directors of VA field stations to determine whether or not a school closing is based on Executive order of the President or due to an emergency situation and to the Director, Education and Rehabilitation Service, to review these decisions.

AUTHORITY: 72 Stat. 1114; 38 U.S.C. 210.

§ 2.1 Delegation of authority to employees to issue subpoenas, etc.

(a) Employees occupying or acting in the positions designated in paragraph (b) of this section shall have the power to issue subpoenas for (by countersigning VA form 2-4003) and compel the attendance of witnesses within a radius of 100 miles from the place of hearing and to require the production of books, papers, documents, and other evidence. Discretion will be used in the exercise of this

power which will not be used except when necessary or when the evidence cannot be obtained efficiently in any other way.

(b) Designated positions: Inspector General, Deputy Inspector General, Assistant Inspector General for Investigation, Deputy Assistant Inspector General for Investigation, General Counsel, Deputy General Counsel, Heads of regional offices and centers having insurance activities, regional office activities, or both.

(c) Any person required by such subpoena to attend as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. In case of disobedience to any such subpoena, the aid of any district court of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of documentary evidence, and such court within the jurisdiction of which the inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any officer, agent, or employee of any corporation or to any other person, issue an order requiring such corporation or other person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. (38 U.S.C. 3311).

[43 FR 39365, Sept. 5, 1978]

§ 2.2 Delegation of authority to employees to take affidavits, to administer oaths, etc.

(a) An employee to whom authority is delegated by the Administrator in accordance with 38 U.S.C. 3311, or to whom authority was delegated by the Administrator in accordance with title III, Public Law 844, 74th Congress, section 616, Public Law 801, 76th Congress, and section 1211, Public Law 85-56, is by virtue of such delegated authority, until such authority is revoked or otherwise terminated, empowered to take affidavits, to administer oaths and affirmations, to aid claimants in the preparation and presentation of claims, and to make investigations, examine witnesses, and certify to the correctness of papers and documents upon any matter within the jurisdiction of the Veterans Administration. Such employee is not authorized to administer oaths in connection with the execution of affidavits relative to fiscal vouchers and is not authorized to take acknowledgments to policy loan agreements and applications for cash surrender value to United States Government life insurance and National Service life insurance.

(b) Any such oath, affirmation, affidavit, or examination, when certified under the hand of any such employee by whom it was administered or taken and authenticated by the seal of the Veterans Administration, may be offered or used in any court of the United States and, without further proof of the identity or authority of such employee, shall have like force and effect as if administered or taken before a clerk of such court.

(c) The delegated authority from the Administrator to employees to take affidavits, to administer oaths, etc., will be evidenced by VA Form 4505 series.

[24 FR 10018, Dec. 11, 1959]

§ 2.3 Delegation of authority to order paid advertising for community placement homes.

(a) Advertisements for homes willing to provide room, board, personal supervision and such other services as are needed for placements of patients in the community under social work supervision, may be placed in newspapers and periodicals with local circulation in the communities which the station uses for such placements.

(b) Authority to order such advertising is hereby delegated to the Chief Medical Director and heads of Veterans Administration hospitals, domiciliaries, outpatient clinics, and regional offices with outpatient clinics pursuant to 5 U.S.C. 302(b)(2).

[29 FR 6776, May 23, 1964, as amended at 32 FR 7127, May 11, 1967]

§ 2.4 Delegation of authority to order paid advertising for use in recruitment.

Paid advertisements may be used in recruitment for competitive and excepted service positions. Such advertisements, for positions other than

physicians, dentists, and nurses in the Department of Medicine and Surgery, will be used only to the extent authorized by Civil Service Commission instructions. Authority to order such advertising is hereby delegated to heads of each department and the Assistant Administrator for Personnel; to the deputies to such officials and to such other officials as are authorized to act for either; and to field station heads, pursuant to 5 U.S.C. 302(b)(2). The authority delegated to field station heads is subject to such administrative controls as may be imposed by their departments.

[32 FR 7127, May 11, 1967]

§ 2.5 Delegation of authority to certify copies of documents, records, or papers in Veterans Administration files.

(a) Persons occupying or acting in the following positions in the Office of the General Counsel are authorized to certify copies of public documents, records, or papers belonging to or in the files of the Veterans Administration for the purposes of 38 U.S.C. 202: General Counsel, Associate General Counsel, Assistant General Counsel, and Deputy Assistant General Counsel.

(b) The person occupying or acting in the position of Chairman of the Veterans Administration Board of Contract Appeals and Contract Appeals Board is authorized to certify copies of decisions, orders, subpoenas, and other documents, records, or papers issued by, belonging to, or in the files of the Boards for the purposes of 38 U.S.C. 202. (38 U.S.C. 210(c)).

[46 FR 18978, Mar. 27, 1981]

§ 2.6 Administrator's delegations of authority to certain officials (38 U.S.C. 212(a)).

Employees occupying or acting in the positions designated below are delegated authority as indicated:

(a) *Department of Medicine and Surgery.* The Chief Medical Director is delegated authority:

(1) To act on all matters assigned to the Department of Medicine and Surgery by statute (38 U.S.C. Ch. 73) and by regulation, except such matters as require the personal attention or action of the Administrator.

(2) To revise, exceed, delete, increase, or decrease fees contained in Veterans Administration Department of Medicine and Surgery Manual M-1, part I, appendix A (following agreement therefor as provided in the contract with the intermediary involved), in an approved State fee schedule, and to add additional fees when found to be necessary, provided such fees are not in excess of those customarily charged the general public, in the community concerned, for the same service.

(3) To designate the Deputy Chief Medical Director, or other physician of the Department of Medicine and Surgery, and authority is hereby delegated such designee to perform the functions prescribed in paragraph (a)(2) of this section.

(4) To revise, exceed, delete, increase or decrease dental fees established in Veterans Administration Department of Medicine and Surgery Manual M-4, chapter 6, and any amendments thereto, and to add additional fees when found to be necessary, provided: such fees are not in excess of those customarily charged the general public, in the community concerned, for the same service.

(5) To designate the Assistant Chief Medical Director for Dentistry, and authority is hereby delegated such designee, to perform the functions prescribed in paragraph (a)(4) of this section.

(6) To supervise programs for grants to the Republic of the Philippines and medical care for Commonwealth Army veterans and Philippine Scouts in Memorial Hospital, Manila, pursuant to the provisions of 38 U.S.C. ch. 17, subch. IV.

(7) To designate the Deputy Chief Medical Director of the Department of Medicine and Surgery, and authority is hereby delegated such designee to designate a Veterans Administration full-time physician or nonmedical Director to serve "as an ex officio member" on advisory bodies to State Comprehensive Health Planning agencies and to individual Regional Medical Programs in those areas in which there is located one or more Veterans

Administration hospitals or other health facilities, who shall serve on such advisory group as the representative of the Veterans Administration health facilities located in that area.

(8) To authorize Directors of Veterans Administration property and facilities under the charge and control of the Veterans Administration to appoint special policemen (hospital police) who shall act as special investigators with the power to enforce Federal laws and Veterans Administration rules and regulations, and to arrest for crimes committed on Veterans Administration property.

(9) To develop and establish minimum safety and quality standards for adaptive equipment provided under chapter 39 of title 38, United States Code, or to appoint a designee to perform these functions.

(b) *Department of Veterans Benefits*— (1) *General.* The Chief Benefits Director is delegated authority to act on all matters assigned to the Department of Veterans Benefits except as provided in § 1.771 of this chapter and to authorize supervisory or adjudicative personnel within his jurisdiction to perform such functions as may be assigned.

(2) *Philippines.* The Director, Veterans Administration Regional Office, Manila, Philippines, is delegated authority to exercise such authorities as are delegated to directors of regional offices in the United States, which are appropriate to the administration in the Republic of the Philippines of the laws administered by the Veterans Administration.

(c) *Controller.* The Controller is delegated authority to act on all matters assigned to his office, and to authorize supervisory personnel within his jurisdiction to perform such functions as may be assigned. Appropriate written notification will be furnished other Federal agencies concerning such authorizations.

(d) *Department and staff office heads.* Authority is delegated to the head of each department and staff office, and to any officer or board designated by them, to take appropriate action (other than provided for in paragraph (e)(4) of this section) in connection with the collection of civil claims by the Veterans Administration for money or property, as authorized in § 1.900, et seq. of this chapter.

(e) *General Counsel.* (1) Under the Federal Tort Claims Act, pursuant to the provisions of 28 U.S.C. 2672, authority is delegated to the General Counsel, Deputy General Counsel and Assistant General Counsel, or those authorized to act for them, to:

(i) Consider, ascertain, adjust, determine, compromise, and settle any claim accruing on and after January 18, 1967, and asserted under the Federal Tort Claims Act, as amended by Public Law 89-506 (80 Stat. 306): *Provided,* That any award, compromise, or settlement in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or designee.

(ii) Execute an appropriate voucher and other necessary instruments in connection with final disposition of claims within their settlement authority, and to execute an appropriate voucher in connection with claims compromised by the Attorney General pursuant to 28 U.S.C. 2677, and to determine whether such claims meet the criteria, "potentially subject to the offset provisions of 38 U.S.C. 351," for the purpose of the last clause under the heading, Veterans Administration "Compensation and Pensions," in the Independent Offices Appropriation Act.

(iii) Authority delegated to the General Counsel may be redelegated by the General Counsel to selected District Counsels or those authorized to act for them.

(2) Under the provisions of 38 U.S.C. 236, the General Counsel, Deputy General Counsel, Assistant General Counsel and District Counsel, or those authorized to act for them, are authorized to consider, ascertain, adjust, determine, and settle tort claims cognizable thereunder and to execute an appropriate voucher and other necessary instruments in connection with the final disposition of such claims.

(3) Under the provisions of "The Federal Medical Care Recovery Act," 42 U.S.C. 2651, et seq. (as implemented by Part 43, Title 28, Code of Federal Regulations), authority is delegated to the General Counsel, Deputy General

Counsel, Assistant General Counsel, Deputy Assistant General Counsel, and District Counsel or those authorized to act for them, to collect in full, compromise, settle, or waive any claim and execute the release thereof; however, claims in excess of $40,000 may be compromised, settled, or waived only with the prior approval of the Department of Justice.

(4) Under the Federal Claims Collection Act of 1966, 31 U.S.C. 951, et seq., authority is delegated to the General Counsel, Deputy General Counsel, Assistant General Counsel, Deputy Assistant General Counsel and District Counsel or those authorized to act for them, to:

(i) Make appropriate determinations with respect to the litigative probabilities of a claim (§ 1.932 of this chapter), the legal merits of a claim (§ 1.942(e) of this chapter), and any other legal considerations of a claim.

(ii) Collect in full a claim involving damage to or loss of Government property under the jurisdiction of the Veterans Administration resulting from negligence or other legal wrong of a person (other than an employee of the Government while acting within the scope of his or her employment) and to compromise, suspend or terminate any such claim not exceeding $20,000.

(iii) Collect a claim in full from a third party or legal entity who is liable for the cost of hospital, medical, surgical, or dental care and treatment of a person, and to compromise, suspend, or terminate any such claim not exceeding $20,000.

(iv) The delegations of authority set forth in paragraphs (e)(4) (ii) and (iii) of this section do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on conduct in violation of the antitrust laws. Such cases will be considered by the General Counsel, who will make the determination in all instances as to whether the case warrants referral to the Department of Justice. The delegations of authority are applicable to those claims where the Department of Justice determines that action based upon the alleged fraud, false claim, or misrepresentation is not warranted.

(5) Pursuant to the provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 241, the General Counsel, Deputy General Counsel, Assistant General Counsel, Deputy Assistant General Counsel and District Counsel or those authorized to act for them, are authorized to settle and pay a claim for not more than $15,000 made by a civilian officer or employee of the Veterans Administration for damage to, or loss of, personal property incident to his or her service occurring subsequent to August 31, 1964.

(6) Authority is delegated to the General Counsel or his designee to make the final decision on complaints of discrimination on grounds of race, color, religion, sex, or national origin brought by an aggrieved employee or qualified applicant for employment in the Veterans Administration.

(7) Under the provisions of 38 U.S.C. 4116(e), authority is delegated to the General Counsel, Deputy General Counsel, and the Assistant General Counsel (Professional Staff Group I) to hold harmless or provide liability insurance for any person to whom the immunity provisions of section 4116 apply, for damage for personal injury or death, or for property damage, negligently caused by such person while furnishing medical care or treatment in the exercise of his or her duties in or for the Department of Medicine and Surgery, if such person is assigned to a foreign country, detailed to State or political division thereof, or is acting under any other circumstances which would preclude the remedies of an injured third person against the United States, provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.

(8) The General Counsel, Deputy General Counsel, and those authorized to act for them, are authorized to conduct investigations, examine witnesses, take affidavits, administer oaths and affirmations, and certify copies of public or private documents on all matters within the jurisdiction

of the General Counsel. Pursuant to the provisions of § 2.2(c), the General Counsel, Deputy General Counsel, and those authorized to act for them, are authorized to countersign VA Form 4505.

(9) All authority delegated in this paragraph to District Counsels will be exercised by them under the supervision of and in accordance with instructions issued by the General Counsel.

(f) *Department of Memorial Affairs.* The Chief Memorial Affairs Director is delegated authority:

(1) To act on all matters assigned to the Department of Memorial Affairs and the National Cemetery System by statute (38 U.S.C. Chapter 24) and by regulation except where specifically requiring the personal attention or action of the Administrator and to authorize supervisory personnel within the jurisdiction of the Chief Memorial Affairs Director to perform such functions as may be assigned.

(2) To designate, as he deems necessary, Superintendents of National Cemeteries as special investigators under 38 U.S.C. 218(a)(3), however, such law enforcement authority is limited to enforcement of rules and regulations governing conduct on property under the charge and control of the Veterans Administration, as those rules and regulations apply to the cemetery over which the individual Superintendent exercises control and jurisdiction. Such designation will not authorize the carrying of firearms by any Superintendent.

(3) To accept donations of a minor nature, such as, individual trees for planting in burial areas and privately purchased grave markers.

(4) To name features in national cemeteries, such as, roads, walks, and special structures.

(5) To establish policies and specifications for inscriptions on Government headstones, markers, and private monuments.

[25 FR 11095, Nov. 23, 1960, as amended at 32 FR 2815, Feb. 11, 1967; 33 FR 11597, Aug. 15, 1968; 35 FR 224, Jan. 7, 1970; 35 FR 5611, Apr. 7, 1970; 35 FR 13771, Aug. 29, 1970; 35 FR 18871, Dec. 11, 1970; 36 FR 2913, Feb. 12, 1971; 36 FR 19974, Oct. 14, 1971; 38 FR 24366, Sept. 7, 1973; 39 FR 12747, Apr. 8, 1974; 40 FR 8819, Mar. 3, 1975; 42 FR 41409 Aug. 17, 1977; 43 FR 10560, Mar. 14, 1978; 43 FR 22973, May 30, 1978]

§ 2.7 Delegation of authority to provide relief on account of administrative error.

(a) Section 210(c)(2) of title 38, United States Code, provides that if the Administrator determines that benefits administered by the Veterans Administration have not been provided by reason of administrative error on the part of the Federal Government or any of its employees, he is authorized to provide such relief on account of such error as he determines equitable, including the payment of moneys to any person whom he determines equitably entitled thereto.

(b) Section 210(c)(3) of title 38, United States Code, provides that if the Administrator determines that any veteran, widow, child of a veteran, or other person, has suffered loss, as a consequence of reliance upon a determination by the Veterans Administration of eligibility or entitlement to benefits, without knowledge that it was erroneously made, he is authorized to provide such relief as he determines equitable, including the payment of moneys to any person equitably entitled thereto. The Administrator is also required to submit an annual report to the Congress, containing a brief summary of each recommendation for relief and its disposition. Preparation of the report shall be the responsibility of the General Counsel.

(c) The authority to grant the equitable relief, referred to in paragraphs (a) and (b) of this section, has not been delegated and is reserved to the Administrator. Recommendation for the correction of administrative error and for appropriate equitable relief therefrom will be submitted to the Administrator, through the General Counsel. Such recommendation may be initiated by the head of the department having responsibility for the benefit, or of any concerned staff office, or by the Chairman, Board of Veterans Appeals. When a recommendation for relief under paragraph (a) or (b) of this section is initiated by the head of a staff office, or the Chairman, Board of Veterans Appeals, the

views of the head of the department having responsibility for the benefit will be obtained and transmitted with the recommendation of the initiating office.

[37 FR 22864, Oct. 26, 1972]

§ 2.8 Delegation of authority to authorize allowances for Veterans Administration employees who are notaries public.

(a) Employees occupying or acting in the positions designated in paragraph (b) of this section are authorized to designate those employees who are required to serve as notaries public in connection with the performance of official business and to pay an allowance for the costs therefor not to exceed the expense required to be incurred by them in order to obtain their commission. (5 U.S.C. 5945.)

(b) Designated positions: Deputy Administrator, Chief Benefits Director, Chief Data Management Director, Chief Medical Director, General Counsel, Directors of regional offices, hospitals, domiciliaries, and centers.

[35 FR 13771, Aug. 29, 1970]

§§ 2.9—2.49 [Reserved]

§ 2.50 Department, staff office, and field station heads are authorized to designate employees to certify copies of records and papers in the custody of the Veterans Administration.

This delegation of authority is identical to § 1.526(1) of this chapter.

[33 FR 9342, June 26, 1968]

§ 2.51 Delegation of authority to certain employees to exercise the power of the Administrator to waive stated procedural (nonsubstantive) requirements of the loan guaranty regulations.

This delegation of authority is identical to § 36.4335 of this chapter.

[24 FR 10019, Dec. 11, 1959]

§ 2.52 Delegation of authority to certain employees to exercise certain powers and functions of the Administrator with respect to the guaranty or insurance of loans. The authority hereby delegated to these employees may, with the approval of the Chief Benefits Director, be redelegated.

This delegation of authority is identical to § 36.4342 of this chapter.

[31 FR 12717, Sept. 29, 1966]

§ 2.53 Delegation of authority to certain employees to exercise certain powers and functions of the Administrator with respect to assisting eligible veterans to acquire specially adapted housing.

This delegation of authority is identical to § 36.4408 of this chapter.

[24 FR 10019, Dec. 11, 1959]

§ 2.54 Delegation of authority to certain employees to exercise the power of the Administrator to waive procedural (nonsubstantive) requirements of the direct loan regulations.

This delegation of authority is identical to § 36.4518 of this chapter.

[24 FR 10019, Dec. 11, 1959]

§ 2.55 Delegation of authority to certain employees to exercise certain powers and functions of the Administrator with respect to the making of direct loans. The authority hereby delegated to these employees may, with the approval of the Chief Benefits Director, be redelegated.

This delegation of authority is identical to § 36.4520 of this chapter.

[31 FR 12717, Sept. 29, 1966]

§ 2.56 Directors of Veterans Administration hospitals authorized to appoint boards of medical officers, consisting of at least three qualified physicians, one of whom must be qualified in treatment of mental disorders, to determine whether members of uniformed services who are being furnished medical care in our hospitals are mentally capable of managing their own affairs.

This delegation of authority is identical to § 17.952(c) of this chapter.

[31 FR 5429, Apr. 6, 1966]

§ 2.57 Chief Attorneys authorized to release funds from Personal Funds of Patients for the needs of veterans and their dependents including amounts fixed by statute or valid administrative regulations as the cost of current maintenance of veterans in public institutions other than Veterans Administration institutions.

This delegation of authority is identical to § 13.500(b) of this chapter.

[25 FR 2163, Mar. 16, 1960]

§ 2.62 The Contract Appeals Board authorized by Administrator to hear and decide appeals in accordance with contract terms and regulations in §§ 1.770 through 1.776 and publish final decisions thereon.

This delegation of authority is identical to § 1.771(a) of this chapter.

[41 FR 24709, June 18, 1976]

§ 2.63 The Contract Appeals Board and its individual members authorized to conduct hearings, administer oaths and affirmations, take testimony and affidavits, order production of documents and other evidence and dismiss proceedings when warranted. The Board also authorized to perform other functions as may be assigned by Administrator.

This delegation of authority is identical to § 1.771(a) of this chapter.

[41 FR 24709, June 18, 1976]

§ 2.63a The Contract Appeals Board authorized to require Veterans Administration contracting officers and other Veterans Administration officials to furnish the Board with such information, technical data and other assistance as the Board may require in the performance of its duties.

This delegation of authority is identical to § 1.771(b) of this chapter.

[41 FR 24709, June 18, 1976]

§ 2.64 The Contract Appeals Board authorized to take official notice of facts within general knowledge and to decide all questions necessary for complete adjudication of appeals.

This delegation of authority is identical to § 1.771(c) of this chapter.

[25 FR 14026, Dec. 31, 1960]

§ 2.65 The Contract Appeals Board may, in its discretion, hear, consider and decide all questions of law necessary for the complete adjudication of issues when appeal is taken pursuant to disputes clause in contract which limits appeals to disputes concerning questions of fact.

This delegation of authority is identical to § 1.771(d) of this chapter.

[41 FR 24709, June 18, 1976]

§ 2.65a The Contract Appeals Board may make findings of fact with respect to a claim without expressing an opinion on the questions of liability should it appear that a claim is involved which is not cognizable under the terms of the contract.

This delegation of authority is identical to § 1.771(d) of this chapter.

[41 FR 24709, June 18, 1976]

§ 2.66 Chairman and Vice Chairman, Board of Veterans Appeals, in addition to authority vested by law, Veterans Administration regulations and manuals, delegated authority to authorize assumption of appellate jurisdiction of adjudicative determination which has not become final; to authorize administrative action on adjudicative determination which has become final by appellate decision or failure to timely appeal; and to authorize central office investigations of matters before the Board.

This delegation of authority is identical to § 19.2 of this chapter.

[34 FR 8703, June 3, 1969]

§ 2.67 Chief Benefits Director and supervisory or adjudicative personnel within jurisdiction of Department of Veterans Benefits designated by him authorized to make findings and decisions under applicable laws, regulations, precedents, and instructions, as to entitlement of claimants to benefits under all laws administered by Veterans Administration governing payment of monetary benefits to veterans and their dependents, within jurisdiction of compensation and pension service.

This delegation of authority is identical to § 3.100(a) of this chapter.

[37 FR 10441, May 23, 1972]

§ 2.67a Chief Benefits Director delegated authority to establish annual income limitations for the purposes of § 3.251(a)(2) based on service defined in § 3.8 (b), (c), or (d) at a rate in Philippine pesos equivalent to $0.50 for each dollar.

This delegation of authority is identical to § 3.100(b) of this chapter.

[31 FR 14454, Nov. 10, 1966]

§ 2.68 [Reserved]

§ 2.68a Director, Compensation and Pension Service and personnel of that service designated by him authorized to determine whether claimant or payee has forfeited right to gratuitous benefits or to remit a prior forfeiture pursuant to provisions of 38 U.S.C. 3503 or 3504.

This delegation of authority is identical to § 3.100(c) of this chapter.

[37 FR 19132, Sept. 19, 1972]

§ 2.69 Chief Benefits Director or Director, Compensation and Pension Service, upon field station submission, authorized to approve on basis of certain criteria extra-schedular evaluation commensurate with average earning capacity impairment due exclusively to service-connected disability or disabilities in exceptional case where schedular evaluations inadequate.

This delegation of authority is identical to § 3.321(b) of this chapter.

[37 FR 10441, May 23, 1972]

§ 2.70 Adjudication Officer, or where regular schedular standards are met as of date of rating decision, the rating board, authorized to approve on an extra-schedular basis a permanent and total disability rating for pension purposes.

This delegation of authority is identical to § 3.332(b) of this chapter.

[39 FR 32987, Sept. 13, 1974]

§ 2.71 Delegation of authority to certain employees to exercise certain powers and functions of the Administrator with respect to the sale of loans with guaranty of payment.

This delegation of authority is identical to § 36.4600 of this chapter.

[27 FR 2685, Mar. 22, 1962]

§ 2.72 Chief Medical Director authorized to exercise powers and functions of Administrator with respect to maintenance and operation of Veterans Canteen Service.

This delegation of authority is identical to § 17.161(a) of this chapter.

[28 FR 453, Jan. 17, 1963]

§ 2.73 Chief Medical Director delegated authority to designate Assistant Chief Medical Director for Administration and Facilities to administer overall operation of Veterans Canteen Service and to designate selected employees of Veterans Canteen Service to perform functions described in 38 U.S.C. Ch. 75, to effectively maintain and operate Veterans Canteen Service.

This delegation of authority is identical to § 17.161(b) of this chapter.

[36 FR 23385, Dec. 9, 1971]

§ 2.74 Field personnel in Office of Veterans Services Division and other employees who are qualified and designated by Field Station Director are authorized, when assigned, to conduct investigations (field examinations) and examine witnesses upon any matter within jurisdiction of Veterans Administration, to take affidavits, to administer oaths and affirmations, to certify copies of public or private documents and to aid claimants in preparation of claims.

This delegation of authority is identical to § 13.2(a) of this chapter.

[40 FR 54244, Nov. 21, 1975]

§ 2.75 The General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), The Deputy Assistant General Counsel of said Staff Group, and the District Counsel and those acting for them are delegated authority to settle and pay a claim for not more than $15,000 made by a civilian officer or employee of the Veterans Administration for damage to, or loss of, personal property incident to such person's service on behalf of the Administrator, and such settlement shall be final and conclusive.

This delegation of authority is identical to § 14.664 of this chapter.

[42 FR 41424, Aug. 17, 1977]

§ 2.76 Chief Benefits Director and supervisory or adjudicative personnel within jurisdiction of education and rehabilitation service designated by him authorized to make findings and decisions under 38 U.S.C. Ch. 31 and applicable regulations, precedents and instructions, as to vocational rehabilitation services for disabled veterans.

This delegation of authority is identical to § 21.1 of this chapter.

[37 FR 10441, May 23, 1972]

§ 2.77 Managers of regional offices and center directors authorized to negotiate and approve contracts with educational institutions and other approved counseling agencies for purpose of providing educational and vocational counseling to persons referred for such services by Veterans Administration.

This delegation of authority is identical to § 21.735(a) of this chapter.

[30 FR 11319, Sept. 3, 1965]

§ 2.78 Except as otherwise provided, Chief Benefits Director and supervisory or adjudicative personnel within jurisdiction of Education and Rehabilitation service designated by him delegated authority to make findings and decisions under 38 U.S.C. Chapters 34, 35, and 36 and applicable regulations, precedents and instructions, as to programs of education or special restorative training.

This delegation of authority is identical to § 21.4001(a) of this chapter.

[37 FR 10441, May 23, 1972]

§ 2.79 Chief Benefits Director and the Director, Education and Rehabilitation Service are delegated authority to enter into agreements for reimbursement of State approving agencies under § 21.4153 of this chapter.

This delegation of authority is identical to § 21.4001(b) of this chapter.

[37 FR 10441, May 23, 1972]

§ 2.80 Director, Education and Rehabilitation Service is delegated authority to waive penalties for conflicting interests as provided by § 21.4005 of this chapter.

This delegation of authority is identical to § 21.4001(c)(1) of this chapter.

[43 FR 3707, Jan. 27, 1978]

§ 2.81 Director, Education and Rehabilitation Service is delegated authority to exercise the functions otherwise required of State approving agencies, under § 21.4150(c) of this chapter.

This delegation of authority is identical to § 21.4001(c)(2) of this chapter.

[37 FR 10441, May 23, 1972]

§ 2.82 Director, Education and Rehabilitation Service is delegated authority to approve courses under § 21.4250(c) of this chapter.

This delegation of authority is identical to § 21.4001(c)(3) of this chapter.

[37 FR 10441, May 23, 1972]

§ 2.83 General Counsel authorized to act for Administrator of veterans affairs in matters concerning patents and inventions, unless otherwise required by law.

This delegation of authority is identical to § 1.653 of this chapter.

[31 FR 5292, Apr. 2, 1966]

§ 2.84 When in the interest of the Service and when administratively feasible, Chief Benefits Director or his designee is authorized to enter into an agreement with another Federal agency, which is authorized to furnish quarters, to provide living quarters, including heat, fuel, and light, in a Government-owned or rented building, for Veterans Administration employees permanently stationed in a foreign country under the provisions of 31 U.S.C. 686.

This delegation of authority is identical to § 1.11 of this chapter.

[33 FR 362, Jan. 10, 1968]

§ 2.85 Chief Benefits Director and/or Assistant Director for Insurance authorized to make any determinations required under § 9.22 of this chapter relative to Servicemen's Group Life Insurance and Veterans' Group Life Insurance.

This delegation of authority is identical to § 9.22(d) of this chapter.

[40 FR 4135, Jan. 28, 1975]

§ 2.86 Chief Benefits Director authorized to act for administrator in making determinations in connection with a borrower's application for assistance in securing correction of structural defects.

This delegation of authority is identical to § 36.4364 of this chapter.

[33 FR 16088, Nov. 1, 1968]

§ 2.87 Chief Benefits Director and his designee delegated authority to take any necessary action as to programs of vocational rehabilitation, education, or special restorative training under 38 U.S.C. chapters 31, 34, 35, and 36 for the purpose of securing evidence of voluntary compliance directly or through the agencies to whom the Administrator has delegated responsibility for various schools or training establishments to implement Part 18 of this chapter.

This delegation of authority is identical to §§ 18a.2 and 21.4001(d) of this chapter.

[35 FR 10759, July 2, 1970]

§ 2.90 Chief Benefits Director delegated responsibility for obtaining evidence of voluntary compliance from recognized national organizations whose representatives are afforded space and office facilities in field stations under his jurisdiction.

This delegation of authority is identical to §§ 18a.2 and 21.4001(e) of this chapter.

[35 FR 10759, July 2, 1970]

§ 2.91 Chief Medical Director delegated responsibility for obtaining evidence of voluntary compliance implementing the provisions of Title VI, Civil Rights Act of 1964, in connection with payments to State homes, with State home facilities for furnishing nursing home care, and from recognized national organizations whose representatives are afforded space and office facilities in field stations under his jurisdiction.

This delegation of authority is identical to § 18a.3 of this chapter.

[35 FR 10759, July 2, 1970]

§ 2.92 General Counsel delegated responsibility, upon receipt of information from the Chief Benefits Director, the Chief Medical Director, or the designee of either of them, that compliance cannot be secured by voluntary means, of forwarding to the recipient or other person the notice required by § 18.9(a) of this chapter, and also is delegated responsibility of representing the agency in all proceedings resulting from such notice.

This delegation of authority is identical to § 18a.5 of this chapter.

[35 FR 10759, July 2, 1970]

§ 2.93 Chief Medical Director is delegated authority to enter into sharing agreements authorized under provisions of 38 U.S.C. 5053 and § 17.210 of this chapter and which may be negotiated pursuant to provisions of 41 CFR 8-3.204(c); contracts with medical schools, clinics and any other group or individual capable of furnishing such services to provide scarce medical specialist services at VA facilities (including, but not limited to, services of physicians, dentists, nurses, physicians' assistants, dentists' assistants, technicians, and other medical support personnel); and when a sharing agreement or contract for scarce medical specialist services is not warranted, contracts authorized under the provisions of 38 U.S.C. 213 for medical and ancillary services.

The delegation of authority is identical to § 17.98 of this chapter.

[39 FR 1839, Jan. 15, 1974]

§ 2.94 Director of VA hospital, domiciliary or outpatient clinic, or his designated contracting officer, is authorized to enter into arrangements authorized under provisions of 38 U.S.C. 213 for providing medical services on a fee basis or on an individually authorized basis subject to limitations in § 17.53 of this chapter; contracts or arrangements on individually authorized basis pursuant to § 17.50b of this chapter to provide care in public and private hospitals; and contracts authorized by 38 U.S.C. 620 for furnishing nursing home care in community facilities.

This delegation of authority is identical to § 17.99 of this chapter.

[35 FR 18198, Nov. 28, 1970]

§ 2.95 Delegation of authority to certain employees to exercise the power of the Administrator to waive stated procedural (nonsubstantive) requirements of the mobile home guaranty regulations.

This delegation of authority is identical to § 36.4220 of this chapter.

[36 FR 1253, Jan. 27, 1971]

§ 2.96 Delegation of authority to certain employees to exercise certain powers and functions of the Administrator with respect to the guaranty of mobile home loans. The authority hereby delegated to these employees may, with the approval of the Chief Benefits Director, be redelegated.

This delegation of authority is identical to § 36.4221 of this chapter.

[36 FR 1253, Jan. 27, 1971]

§ 2.97 Chief Benefits Director delegated responsibility to enter into agreement with Federal Trade Commission to utilize its services and facilities to carry out investigations and make determinations as to enrollment of eligible veteran or eligible person in any course offered by an institution which utilizes advertising, sales, or enrollment practices of any type which are erroneous, deceptive or misleading either by actual statement, omission, or intimation.

This delegation of authority is identical to § 21.4001(f) of this chapter.

[40 FR 31755, July 29, 1975]

§ 2.98 Delegation of authority to Directors of VA field stations to determine whether or not a school closing is based on Executive order of the President or due to an emergency situation and to the Director, Education and Rehabilitation Service, to review these decisions.

This delegation of authority is identical to §§ 21.130, 21.4203, and 21.4205 of this chapter.

[44 FR 25648, May 2, 1979]

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Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

AUTHORITY: 72 Stat. 1114; 38 U.S.C. 210.

GENERAL

§ 3.1 Definitions.

(a) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including their Reserve components.

(b) "Reserve component" means the Army, Naval, Marine Corps, Air Force, and Coast Guard Reserves and the National and Air National Guard of the United States.

(c) "Reserves" means members of a Reserve component of one of the Armed Forces.

(d) "Veteran" means a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

(1) For compensation and dependency and indemnity compensation the term "veteran" includes a person who died in active service and whose death was not due to willful misconduct.

(2) For death pension the term "veteran" includes a person who died in active service under conditions which preclude payment of service-connected death benefits, provided such person had completed at least 2 years honorable military, naval or air service, as certified by the Secretary concerned. (See § 3.3(b)(4)(iii)). (38 U.S.C. 541; Pub. L. 93-527, 88 Stat. 1702)

(e) "Veteran of any war" means any veteran who served in the active military, naval or air service during a period of war as set forth in § 3.2.

(f) "Period of war" means the periods described in § 3.2.

(g) "Secretary concerned" means:

(1) The Secretary of the Army, with respect to matters concerning the Army;

(2) The Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;

(3) The Secretary of the Air Force, with respect to matters concerning the Air Force;

(4) The Secretary of Transportation, with respect to matters concerning the Coast Guard (Pub. L. 89-670);

(5) The Secretary of Health, Education, and Welfare, with respect to matters concerning the Public Health Service; and

(6) The Secretary of Commerce, with respect to matters concerning the Coast and Geodetic Survey, the Environmental Science Services Administration, and the National Oceanic and Atmospheric Administration.

(h) "Discharge or release" includes retirement from the active military, naval, or air service.

(i) "State" means each of the several States, Territories and possessions of the United States, the District of Columbia, and Commonwealth of Puerto Rico.

(j) "Marriage" means a marriage valid under the law of the place where the parties resided at the time of marriage, or the law of the place where the parties resided when the right to benefits accrued. (38 U.S.C. 103(c))

(k) "Service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(l) "Non-service-connected" means, with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(m) "In line of duty" means an injury or disease incurred or aggravated during a period of active military, naval, or air service unless such injury or disease was the result of the veteran's own willful misconduct. A service department finding that injury, disease or death occurred in line of duty will be binding on the Veterans Administration unless it is patently inconsistent with the requirements of laws administered by the Veterans Administration. Requirements as to line of duty are not met if at the time the injury was suffered or disease contracted the veteran was:

(1) Avoiding duty by desertion, or was absent without leave which materially interfered with the performance of military duty.

(2) Confined under a sentence of court-martial involving an unremitted dishonorable discharge.

(3) Confined under sentence of a civil court for a felony as determined under the laws of the jurisdiction where the person was convicted by such court. (38 U.S.C. 105)

(n) "Willful misconduct" means an act involving conscious wrongdoing or known prohibited action (malum in se or malum prohibitum). A service department finding that injury, disease or death was not due to misconduct will be binding on the Veterans Administration unless it is patently inconsistent with the facts and the requirements of laws administered by the Veterans Administration.

(1) It involves deliberate or intentional wrongdoing with knowledge of or wanton and reckless disregard of its probable consequences.

(2) Mere technical violation of police regulations or ordinances will not per se constitute willful misconduct.

(3) Willful misconduct will not be determinative unless it is the proximate cause of injury, disease or death. (See §§ 3.301, 3.302.)

(o) "Political subdivision of the United States" includes the jurisdiction defined as a State in paragraph (i) of this section, and the counties, cities or municipalities of each.

(p) "Claim"—"Application" means a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit.

(q) "Notice" means written notice sent to a claimant or payee at his or her latest address of record.

(r) "Date of receipt" means the date on which a claim, information or evidence was received in the Veterans Administration, except as to specific provisions for claims or evidence received in the State Department (§ 3.108), or in the Social Security Administration (§ 3.153, § 3.201), or Department of Defense as to initial claims filed at or prior to separation.

(s) "On the borders thereof" means, with regard to service during the Mexican border period, the States of Arizona, California, New Mexico, and Texas, and the nations of Guatemala and British Honduras. (38 U.S.C. 101(30); Pub. L. 91-588, 84 Stat. 1580)

(t) "In the waters adjacent thereto" means, with regard to service during the Mexican border period, the waters (including the islands therein) which

are within 750 nautical miles (863 statute miles) of the coast of the mainland of Mexico. (38 U.S.C. 101(30); Pub. L. 91-588, 84 Stat. 1580)

(u) "Section 306 pension" means those disability and death pension programs in effect on December 31, 1978, which arose out of Pub. L. 86-211; 73 Stat. 432.

(v) "Old-Law pension" means the disability and death pension programs that were in effect on June 30, 1960. Also known as protected pension, i.e. protected under section 9(b) of the Veteran's Pension Act of 1959 (Pub. L. 86-211; 73 Stat. 432).

(w) "Improved pension" means the disability and death pension programs becoming effective January 1, 1979, under authority of Pub. L. 95-588; 92 Stat. 2497.

(x) "Service pension" is the name given to Spanish-American War pension. It is referred to as a service pension because entitlement is based solely on service without regard to nonservice-connected disability, income and net worth. (38 U.S.C. 512, 536)

[26 FR 1563, Feb. 24, 1961, as amended at 27 FR 4023, Apr. 27, 1962; 27 FR 11886, Dec. 1, 1962; 28 FR 320, Jan. 11, 1963; 32 FR 6840, May 4, 1967; 36 FR 5341, Mar. 20, 1971; 36 FR 8445, May 6, 1971; 40 FR 16064, Mar. 3, 1975; 44 FR 45931, Aug. 6, 1979]

CROSS REFERENCES: Pension. See § 3.3.
Compensation. See § 3.4.
Dependency and indemnity compensation. See § 3.5.

§ 3.2 Periods of war.

This section sets forth the beginning and ending dates of each war period beginning with the Indian wars. Note that the term "period of war" in reference to pension entitlement under 38 U.S.C. 521, 541 and 542 means all of the war periods listed in this section except the Indian wars and the Spanish-American War. See § 3.3(a)(3) and (b)(4)(i).

(a) *Indian wars.* January 1, 1817, through December 31, 1898, inclusive. Service must have been rendered with the United States military forces against Indian tribes or nations.

(b) *Spanish-American War.* April 21, 1898, through July 4, 1902, inclusive. If the veteran served with the United States military forces engaged in hostilities in the Moro Province, the ending date is July 15, 1903. The Philippine Insurrection and the Boxer Rebellion are included.

(c) *World War I.* April 6, 1917, through November 11, 1918, inclusive. If the veteran served with the United States military forces in Russia, the ending date is April 1, 1920. Service after November 11, 1918 and before July 2, 1921 is considered World War I service if the veteran served in the active military, naval, or air service after April 5, 1917 and before November 12, 1918.

(d) *World War II.* December 7, 1941, through December 31, 1946, inclusive. If the veteran was in service on December 31, 1946, continuous service before July 26, 1947, is considered World War II service.

(e) *Korean conflict.* June 27, 1950, through January 31, 1955, inclusive.

(f) *Vietnam era.* August 5, 1964, through May 7, 1975 inclusive.

(g) *Future dates.* The period beginning on the date of any future declaration of war by the Congress and ending on a date prescribed by Presidential proclamation or concurrent resolution of the Congress. (38 U.S.C. 101)

(h) *Mexican border period.* May 9, 1916 through April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto. (38 U.S.C. 101(30); Pub. L. 92-198, 85 Stat. 663)

[26 FR 1563, Feb. 24, 1961, as amended at 32 FR 13223, Sept. 19, 1967; 36 FR 8445, May 6, 1971; 37 FR 6676, Apr. 1, 1972; 40 FR 27030, June 26, 1975; 44 FR 45931, Aug. 6, 1979]

§ 3.3 Pension.

(a) *Pension for veterans*—(1) *Service pension; Spanish-American War.* A benefit payable monthly by the Veterans Administration because of service in the Spanish-American War. Basic entitlement exists if a veteran:

(i) Had 70 (or 90) days or more active service during the Spanish-American War; or

(ii) Was discharged or released from such service for a disability adjudged service connected without benefit of

presumptive provisions of law, or at the time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability. (38 U.S.C. 512)

(2) *Section 306 pension.* A benefit payable monthly by the Veterans Administration because of nonservice-connected disability or age. Basic entitlement exists if a veteran:

(i) Served 90 days or more in either the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era, or served an aggregate of 90 days or more in separate periods of service during the same or during different war periods, including service during the Spanish-American War (Pub. L. 87-101, 75 Stat. 218; Pub. L. 90-77, 81 Stat. 178; Pub. L. 92-198, 85 Stat. 663); or

(ii) Served continuously for a period of 90 consecutive days or more and such period ended during the Mexican border period or World War I, or began or ended during World War II, the Korean conflict or the Vietnam era (Pub. L. 87-101, 75 Stat. 218; Pub. L. 88-664, 78 Stat. 1094; Pub. L. 90-77, 81 Stat. 178; Pub. L. 91-588, 84 Stat. 1580; Pub. L. 92-198, 85 Stat. 663; Pub. L. 94-169, 89 Stat. 1013; Pub. L. 95-204, 91 Stat. 1455); or

(iii) Was discharged or released from such wartime service, before having served 90 days, for a disability adjudged service connected without the benefit of presumptive provisions of law, or at the time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability; and

(iv) Is permanently and totally disabled (*a*) from nonservice-connected disability not due to the veteran's own willful misconduct or vicious habits, or (*b*) by reason of having attained the age of 65 years or by reason of having become unemployable after age 65; and

(v) (*a*) Is in receipt of section 306 pension or (*b*) has an application for pension pending on December 31, 1978, or (*c*) meets the age or disability requirements for such pension on December 31, 1978, and files a claim within 1 year of that date and also within 1 year after meeting the age or disability requirements.

(vi) Meets the income and net worth requirements of 38 U.S.C. 521 and 522 as in effect on December 31, 1978, and all other provisions of title 38, United States Code, in effect on December 31, 1978, applicable to section 306 pension.

NOTE: The pension provisions of Title 38, United States Code, as in effect on December 31, 1978, are available in any VA regional office.

(3) *Improved pension; Pub. L. 95-588 (92 Stat. 2497).* A benefit payable by the Veterans Administration to veterans of a period or periods of war because of nonservice-connected disability or age. The qualifying periods of war for this benefit are the Mexican border period, World War I, World War II, the Korean conflict and the Vietnam era. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if a veteran:

(i) Served in the active military, naval or air service for 90 days or more during a period of war (38 U.S.C. 521(j)); or

(ii) Served in the active military, naval or air service during a period of war and was discharged or released from such service for a disability adjudged service-connected without presumptive provisions of law, or at time of discharge had such a service-connected disability, shown by official service records, which in medical judgment would have justified a discharge for disability (38 U.S.C. 521(j)); or

(iii) Served in the active military, naval or air service for a period of 90 consecutive days or more and such period began or ended during a period of war (38 U.S.C. 521(j)); or

(iv) Served in the active military, naval or air service for an aggregate of 90 days or more in two or more separate periods of service during more than one period of war (38 U.S.C. 521(j)); and

(v) Is permanently and totally disabled (*a*) from nonservice-connected

disability not due to the veteran's own willful misconduct or vicious habits, or (*b*) by reason of having attained age 65 or by reason of having become unemployable after age 65 (38 U.S.C. 502); and

(vi) Meets the net worth requirements under § 3.274 and does not have an annual income in excess of the applicable maximum annual pension rate specified in § 3.23.

(b) *Pension for survivors*—(1) *Indian war death pension.* A monthly benefit payable by the Veterans Administration to the surviving spouse or child of a deceased veteran of an Indian war. Basic entitlement exists if a veteran had qualifying service as specified in 38 U.S.C. 511. Indian war death pension rates are set forth in 38 U.S.C. 534 and 535.

(2) *Spanish-American War death pension.* A monthly benefit payable by the Veterans Administration to the surviving spouse or child of a deceased veteran of the Spanish-American War, if the veteran:

(i) Had 90 days or more active service during the Spanish-American War; or

(ii) Was discharged or released from such service for a disability service-connected without benefit of presumptive provisions of law, or at time of discharge had such a service-connected disability, as shown by official service records, which in medical judgment would have justified a discharge for disability. (38 U.S.C. 536, 537)

(3) *Section 306 death pension.* A monthly benefit payable by the Veterans Administration to a surviving spouse or child because of a veteran's nonservice-connected death. Basic entitlement exists if:

(i) The veteran had qualifying service as specified in paragraph (a)(2) (i), (ii) or (iii) at this section; or

(ii) The veteran was, at time of death, receiving or entitled to receive compensation or retired pay for service-connected disability based on wartime service; or

(iii) The veteran died in active service and the requirements of § 3.1(d)(2) are met; and

(iv) The surviving spouse or child (*a*) was in receipt of section 306 pension on December 31, 1978, or (*b*) had a claim for pension pending on that date, or (*c*) filed a claim for pension after that date but within 1 year after the veteran's death, if the veteran died before January 1, 1979; and

(v) The surviving spouse or child meets the income and net worth requirements of 38 U.S.C. 541, 542 or 543 as in effect on December 31, 1978, and all other provisions of title 38, United States Code in effect on December 31, 1978, applicable to section 306 pension.

NOTE: The pension provisions of Title 38, United States Code, as in effect on December 31, 1978, are available in any VA regional office.

(4) *Improved death pension, Pub. L. 95-588.* A benefit payable by the Veterans Administration to a veteran's surviving spouse or child because of the veteran's nonservice-connected death. Payments are made monthly unless the amount of the annual benefit is less than 4 percent of the maximum annual rate payable to a veteran under 38 U.S.C. 521(b), in which case payments may be made less frequently than monthly. Basic entitlement exists if:

(i) The veteran's service meets the requirements of paragraph (a)(3) (i), (ii), (iii) or (iv) of this section (38 U.S.C. 541(a)); or

(ii) The veteran was at time of death receiving or entitled to receive compensation or retired pay for a service-connected disability based on service during a period of war. (The qualifying periods of war are specified in paragraph (a)(3) of this section.) (38 U.S.C. 541(a)); or

(iii) The veteran died in service and the requirements of § 3.1(d)(2) are met; and

(iv) The surviving spouse or child meets the net worth requirements of § 3.274 and has an annual income not in excess of the applicable maximum annual pension rate specified in § 3.23 and § 3.24.

[44 FR 45931, Aug. 6, 1979]

CROSS REFERENCES: Section 306 pension. See § 3.1(u).

Improved pension. See § 3.1(w).

Improved pension rates. See § 3.23.

Improved pension rates-surviving children. See § 3.24.

Frequency of payment of improved pension. See § 3.30.

Relationship of net worth to pension entitlement. See § 3.274.

§ 3.4 Compensation.

(a) *Compensation.* This term means a monthly payment made by the Veterans Administration to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957, or under the circumstances outlined in paragraph (c)(2) of this section. If the veteran was discharged or released from service, the discharge or release must have been under conditions other than dishonorable. (38 U.S.C. 101(2), (13))

(b) *Disability compensation.* (1) Basic entitlement for a veteran exists if the veteran is disabled as the result of a personal injury or disease (including aggravation of a condition existing prior to service) while in active service if the injury or the disease was incurred or aggravated in line of duty. (38 U.S.C. 310, 331)

(2) An additional amount of compensation may be payable for a spouse, child, and/or dependent parent where a veteran is entitled to compensation based on disability evaluated as 30 per centum or more disabling. (38 U.S.C. 315)

(c) *Death compensation.* Basic entitlement exists for a surviving spouse, child or children, and dependent parent or parents if:

(1) The veteran died before January 1, 1957; or

(2) The veteran died on or after May 1, 1957, and before January 1, 1972, if at the time of death a policy of United States Government Life Insurance or National Service Life Insurance was in effect under waiver of premiums under 38 U.S.C. 724 unless the waiver was granted under the first proviso of section 622(a) of the National Service Life Insurance Act of 1940, and the veteran died before return to military jurisdiction or within 120 days thereafter. (38 U.S.C. 321, 341) (See § 3.5(d) as to Public Health Service.)

[26 FR 1564, Feb. 24, 1961, as amended at 38 FR 21923, Aug. 14, 1973; 39 FR 34529, Sept. 26, 1974; 44 FR 22717, Apr. 17, 1979]

§ 3.5 Dependency and indemnity compensation.

(a) *"Dependency and indemnity compensation."* This term means a monthly payment made by the Veterans' Administration to a surviving spouse, child, or parent:

(1) Because of a service-connected death occurring after December 31, 1956, or

(2) Pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957. (38 U.S.C. 101 (14))

(b) *Entitlement.* Basic entitlement for a surviving spouse, child or children, and parent or parents of a veteran exists, if:

(1) Death occurred on or after January 1, 1957, except in the situation specified in § 3.4(c)(2); or

(2) Death occurred prior to January 1, 1957, and the claimant was receiving or eligible to receive death compensation on December 31, 1956 (or, as to a parent, would have been eligible except for income), under laws in effect on that date or who subsequently becomes eligible by reason of a death which occurred prior to January 1, 1957; or

(c) *Exclusiveness of remedy.* No person eligible for dependency and indemnity compensation by reason of a death occurring on or after January 1, 1957, shall be eligible by reason of such death for death pension or compensation under any other law administered by the Veterans Administration. (38 U.S.C. 417)

(d) *Group life insurance.* No dependency and indemnity compensation or death compensation shall be paid to any surviving spouse, child or parent based on the death of a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration occuring on or after May 1, 1957, if any amounts are payable under the Federal Employees' Group Life Insurance Act of 1954 (Pub. L. 598, 83d Cong., as amended) based on the same death.

(Sec. 501(c)(2), Pub. L. 881, 84th Cong. (70 Stat. 857), as amended by Sec. 13(u), Pub. L. 85-857; (72 Stat. 1266); Sec. 5, Pub. L. 91-621 (84 Stat. 1863))

(e) *Surviving spouse's rate.* (1) The monthly rate of dependency and indemnity compensation for a surviving spouse is based on the "pay grade" of the verteran. This rate is subject to increase as provided in paragraph (e) (3) and (4) of this section. (38 U.S.C. 411(a))

(2) The Secretary of the concerned service department will certify the "pay grade" of the veteran and the certification will be binding on the Veterans Administration. (38 U.S.C. 421)

(3) If there is a surviving spouse with one or more children under the age of 18 (including a child not in the surviving spouse's actual or constructive custody and a child who is in active military, air, or naval service), the total amount payable shall be increased by the amount set forth in 38 U.S.C. 411(b) for each child.

(4) If the surviving spouse is determined to be in need of regular aid and attendance under the criteria in § 3.352 or is a patient in a nursing home, the total amount payable shall be increased by the amount set forth in 38 U.S.C. 411(c). If the surviving spouse does not qualify for the regular aid and attendance allowance but is housebound under the criteria in § 3.351(f), the total amount payable shall be increased by the amount set forth in 38 U.S.C. 411(d).

[29 FR 10396, July 25, 1964, as amended at 35 FR 18661, Dec. 9, 1970; 37 FR 6676, Apr. 1, 1972; 39 FR 34529, Sept. 26, 1974; 44 FR 22717, Apr. 17, 1979]

§ 3.6 Duty periods.

(a) *"Active military, naval, and air service".* This includes active duty, and period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty.

(b) *"Active duty".* This means:

(1) Full-time duty in the Armed Forces, other than active duty for training;

(2) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service:

(i) On or after July 29, 1945, or

(ii) Before that date under circumstances affording entitlement to "full military benefits," or

(iii) At any time, for the purposes of dependency and indemnity compensation.

(3) Full-time duty as a commissioned officer of the Coast and Geodetic Survey or of its successor agencies, the Environmental Science Services Administration and the National Oceanic and Atmospheric Administration:

(i) On or after July 29, 1945, or

(ii) Before that date:

(*a*) While on transfer to one of the Armed Forces, or

(*b*) While, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or

(*c*) In the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or

(iii) At any time, for the purposes of dependency and indemnity compensation.

(4) Service at any time as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy;

(5) Authorized travel to or from such duty or service; and

(6) A person discharged or released from a period of active duty, shall be deemed to have continued on active duty during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to have been required for him or her to proceed to his or her home by the most direct route, and, in all instances, until midnight of the date of such discharge or release. (38 U.S.C. 106(c))

(i) January 1, 1957, for service-connected death benefits where the discharge or release occurred on or after that date.

(ii) January 1, 1959, for service-connected disability compensation where the discharge or release occurred on or after January 1, 1957.

(iii) July 21, 1961, for compensation or pension, where the discharge or release occurred prior to January 1, 1957.

(c) *Active duty for training.* (1) Full-time duty in the Armed Forces performed by Reserves for training purposes;

(2) Full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service:

(i) On or after July 29, 1945, or

(ii) Before that date under circumstances affording entitlement to "full military benefits," or

(iii) At any time, for the purposes of dependency and indemnity compensation:

(3) Full-time duty performed by members of the National Guard of any State, under 32 U.S.C. 316, 502, 503, 504, or 505, or the prior corresponding provisions of law or full-time duty by such members while participating in the reenactment of the Battle of First Manassas in July 1961;

(4) For the purposes of dependency and indemnity compensation, annual training duty to which ordered for a period of 14 days or more by a member of a Reserve Officers' Training Corps (38 U.S.C. 403); and

(5) Authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(d) *Inactive duty training.* This means:

(1) Duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under 37 U.S.C. 206 or any other provision of law;

(2) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(3) Duty (other than full-time duty) performed by a member of the National Guard of any State, under 32 U.S.C. 316, 502, 503, 504, or 505, or the prior corresponding provisions of law. The term "inactive duty training" does not include:

(i) Work or study performed in connection with correspondence courses,

(ii) Attendance at an educational institution in an inactive status, or

(iii) Duty performed as a temporary member of the Coast Guard Reserve.

(e) *Travel status; training duty (disability or death from injury).* Any member of a Reserve Component:

(1) Who, when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive duty training; and

(2) Who is disabled or dies from an injury incurred while proceeding directly to or returning directly from such active duty for training or inactive duty training shall be deemed to have been on active duty for training or inactive duty training, as the case may be. The Veterans Administration will determine whether such individual was so authorized or required to perform such duty, and whether the individual was disabled or died from injury so incurred. In making such determinations, there shall be taken into consideration the hour on which the individual began to proceed or return; the hour on which the individual was scheduled to arrive for, or on which the individual ceased to perform, such duty; the method of travel performed; the itinerary; the manner in which the travel was performed; and the immediate cause of disability or death. Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of this paragraph, the burden of proof shall be on the claimant. (38 U.S.C. 106 (d))

[26 FR 1564, Feb. 24, 1961, as amended at 26 FR 6767, July 28, 1961; 27 FR 4023, Apr. 27, 1962; 29 FR 14171, Oct. 15, 1964; 36 FR 5341, Mar. 20, 1971; 41 FR 26881, June 29, 1976]

§ 3.7 Persons included.

The following are included:

(a) *Aerial transportation of mail (Pub. Law 140, 73d Congress).* Persons who were injured or died while serving under conditions set forth in Public Law 140, 73d Congress.

(b) *Aliens.* Effective July 28, 1959, a veteran discharged for alienage during a period of hostilities unless evidence affirmatively shows he was discharged at his own request. A veteran who was discharged for alienage after a period of hostilities and whose service was honest and faithful is not barred from benefits if he is otherwise entitled. A discharge changed prior to January 7, 1957, to honorable by a board established under authority of section 301, Public Law 346, 78th Congress, as amended, or section 207, Public Law 601, 79th Congress, as amended (now 10 U.S.C. 1552 and 1553), will be considered as evidence that the discharge was not as the alien's request. (38 U.S.C. 3103(c)) (See § 3.12.)

(c) *Army field clerks.* Included as enlisted men.

(d) *Army Nurse Corps, Navy Nurse Corps, and female dietetic and physical therapy personnel.* (1) Army and Navy nurses (female) on active service under order of the service department.

(2) Dietetic and physical therapy (female) personnel, excluding students and apprentices, appointed with relative rank on or after December 22, 1942, or commissioned on or after June 22, 1944.

(e) *Aviation camps.* Students who were enlisted men during World War I.

(f) *Cadets and midshipmen.* See § 3.6(b)(4).

(g) *Coast and Geodetic Survey, and its successor agencies, the Environmental Science Services Administration and the National Oceanic and Atmospheric Administration.* See § 3.6(b)(3).

(h) *Coast Guard.* Active service in Coast Guard on or after January 29, 1915, while under jurisdiction of the Treasury Department, Navy Department, or the Department of Transportation. (See § 3.6 (c) and (d) as to temporary members of the Coast Guard Reserves.)

(i) *Contract surgeons.* For compensation and dependency and indemnity compensation, if the disability or death was the result of disease or injury contracted in line of duty during a war period while actually performing the duties of assistant surgeon or acting assistant surgeon with any military force in the field, or in transit or in hospital.

(j) *Field clerks, Quartermaster Corps.* Included as enlisted men.

(k) *Lighthouse service personnel.* Transferred to the service and jurisdiction of War or Navy Departments by Executive order under the Act of August 29, 1916. Effective July 1, 1939, service was consolidated with the Coast Guard.

(l) *Male nurses.* Persons who were enlisted men of Medical Corps.

(m) *National Guard.* Members of the National Guard of the United States and Air National Guard of the United States are included as Reserves. See § 3.6 (c) and (d) as to training duty performed by members of a State National Guard and paragraph (o) of this section as to disability suffered after being called into Federal service and before enrollment.

(n) *Persons heretofore having a pensionable or compensable status.* (38 U.S.C. 352, 504)

(o) *Persons ordered to service.* (1) Any person who has:

(i) Applied for enlistment or enrollment in the active military, naval, or air service and who is provisionally accepted and directed, or ordered, to report to a place for final acceptance into the service, or

(ii) Been selected or drafted for such service, and has reported according to a call from the person's local draft board and before final rejection, or

(iii) Been called into Federal service as a member of the National Guard, but has not been enrolled for Federal service, and

(iv) Suffered injury or disease in line of duty while going to, or coming from, or at such place for final acceptance or entry upon active duty,

is considered to have been on active duty and therefore to have incurred such disability in active service.

(2) The injury or disease must be due to some factor relating to compliance with proper orders. Draftees and selectees are included when reporting

for preinduction examination or for final induction on active duty. Such persons are not included for injury or disease suffered during the period of inactive duty, or period of waiting, after a final physical examination and prior to beginning the trip to report for induction. Members of the National Guard are included when reporting to a designated rendezvous.

(p) *Philippine Scouts and others.* See § 3.8.

(q) *Public Health Service.* See § 3.6 (a) and (b).

(r) *Reserves.* See § 3.6 (a), (b), and (c).

(s) *Revenue Cutter Service.* While serving under direction of Secretary of the Navy in cooperation with the Navy.

(t) *Training camps.* Members of training camps authorized by section 54 of the National Defense Act, except members of Student Army Training Corps Camps at the Presidio of San Francisco, Plattsburg, New York, Fort Sheridan, Illinois, Howard University, Washington, D.C., Camp Perry, Ohio, and Camp Hancock, Georgia, from July 18, 1918, to September 16, 1918.

(u) *Women's Army Corps (WAC).* Service on or after July 1, 1943.

(v) *Women's Reserve of Navy, Marine Corps, and Coast Guard.* Same benefits as members of the Officers Reserve Corps or enlisted men of the United States Navy, Marine Corps or Coast Guard.

(w) *Russian Railway Service Corps.* Service during World War I as certified by the Secretary of the Army.

(x) *Active military service certified as such under section 401 of Pub. L. 95-202.* Such service if certified by the Secretary of Defense as active military service and if a discharge under honorable conditions is issued by the Secretary. The effective dates for an award based upon such service shall be as provided by § 3.400(z) and 38 U.S.C. 3010, except that in no event shall such an award be made effective earlier than November 23, 1977. Service in the following groups has been certified as active military service.

(1) Women's Air Forces Service Pilots (WASP).

(2) Signal Corps Female Telephone Operators Unit of World War I.

(3) Engineer Field Clerks.

(4) Women's Army Auxiliary Corps (WAAC).

(5) Quartermaster Corps Female Clerical Employees serving with the AEF (American Expeditionary Forces) in World War I.

(6) Civilian Employees of Pacific Naval Air Bases Who Actively Participated in Defense of Wake Island During World War II.

[26 FR 1565, Feb. 24, 1961, as amended at 27 FR 4024, Apr. 27, 1962; 32 FR 6840, May 4, 1967; 36 FR 5341, Mar. 20, 1971; 38 FR 28826, Oct. 17, 1973; 39 FR 41252, Nov. 26, 1974; 45 FR 67091, Oct. 9, 1980; 46 FR 23925, Apr. 29, 1981]

CROSS REFERENCE: Office of Workers' Compensation Programs. See § 3.708.

§ 3.8 Philippine and Insular Forces.

(a) *Regular Philippine Scouts.* Service in the Philippine Scouts (except that described in paragraph (b) of this section), the Insular Force of the Navy, Samoan Native Guard, and Samoan Native Band of the Navy is included for pension, compensation, dependency and indemnity compensation, and burial allowance. Benefits are payable in dollars.

(b) *Other Philippine Scouts.* Service of persons enlisted under section 14, Public Law 190, 79th Congress (Act of October 6, 1945), is included for compensation and dependency and indemnity compensation. Such benefits are payable at a rate in Philippine pesos equivalent to $0.50 for each dollar authorized under the law. All enlistments and reenlistments of Philippine Scouts in the Regular Army between October 6, 1945, and June 30, 1947, inclusive were made under the provisions of Public Law 190 as it constituted the sole authority for such enlistments during that period. This paragraph does not apply to officers who were commissioned in connection with the administration of Public Law 190 (38 U.S.C. 107; Public Law 89-641).

(c) *Commonwealth Army of the Philippines.* (1) Service is included, for compensation, dependency and indemnity compensation, and burial allowance, from and after the dates and hours, respectively, when they were called into service of the Armed Forces

of the United States by orders issued from time to time by the General Officer, U.S. Army, pursuant to the Military Order of the President of the United States dated July 26, 1941. Service as a guerrilla under the circumstances outlined in paragraph (d) of this section is also included. Service on or after July 1, 1946, is not included. Benefits are payable at a rate in Philippine pesos equivalent to $0.50 for each dollar authorized under the law (38 U.S.C. 107; Public Law 89-641).

(2) Unless the record shows examination at time of entrance into the Armed Forces of the United States, such persons are not entitled to the presumption of soundness. This also applies upon reentering the Armed Forces after a period of inactive service.

(d) *Guerrilla service.* (1) Persons who served as guerrillas under a commissioned officer of the United States Army, Navy or Marine Corps, or under a commissioned officer of the Commonwealth Army recognized by and cooperating with the United States Forces are included. (See paragraph (c) of this section.) Service as a guerrilla by a member of the Philippine Scouts or the Armed Forces of the United States is considered as service in his regular status. (See paragraph (a) of this section.)

(2) The following certifications by the service departments will be accepted as establishing guerrilla service:

(i) Recognized guerrilla service;

(ii) Unrecognized guerrilla service under a recognized commissioned officer only if the person was a former member of the United States Armed Forces (including the Philippine Scouts), or the Commonwealth Army. This excludes civilians.

A certification of "Anti-Japanese Activity" will not be accepted as establishing guerrilla service.

(e) *Combined service.* Where a veteran who had Commonwealth Army or guerrilla service and also had other service, wartime or peacetime, in the Armed Forces of the United States, has disabilities which are compensable separately on a dollar and a peso basis, and the disabilities are combined under the authority contained in 38 U.S.C. 357, the evaluation for which dollars are payable will be first considered and the difference between this evaluation and the combined evaluation will be the basis for computing the amount payable in pesos.

[26 FR 1565, Feb. 24, 1961, as amended at 31 FR 14454, Nov. 10, 1966]

CROSS REFERENCE: Computation of service. See § 3.15.

§ 3.9 Philippine service.

(a) For a Regular Philippine Scout or a member of one of the regular components of the Philippine Commonwealth Army while serving with Armed Forces of United States, the period of active service will be from the date certified by the Armed Forces as the date of enlistment or date of report for active duty whichever is later to date of release from active duty, discharge, death, or in the case of a member of the Philippine Commonwealth Army June 30, 1946, whichever was earlier. Release from active duty includes:

(1) Leaving one's organization in anticipation of or due to the capitulation.

(2) Escape from prisoner-of-war status.

(3) Parole by the Japanese.

(4) Beginning of missing-in-action status, except where factually shown at that time he was with his unit or death is presumed to have occurred while carried in such status: *Provided, however,* That where there is credible evidence that he was alive after commencement of his missing-in-action status, the presumption of death will not apply for Veterans Administration purposes.

(5) Capitulation on May 6, 1942, except that periods of recognized guerrilla service or unrecognized guerrilla service under a recognized commissioned officer or periods of service in units which continued organized resistance against Japanese prior to formal capitulation will be considered return to active duty for period of such service.

(b) Active service of a Regular Philippine Scout or a member of the Philippine Commonwealth Army serving with the Armed Forces of the United States will include a "prisoner-of-war"

status immediately following a period of active duty, or a period of recognized guerrilla service or unrecognized guerrilla service under a recognized commissioned officer. In those cases where following release from active duty as set forth in paragraph (a) of this section, the veteran is factually found by the Veterans Administration to have been injured or killed by the Japanese because of anti-Japanese activities or his former service in the Armed Forces of the United States, such injury or death may be held to have been incurred in active service for Veterans Administration purposes. Determination shall be based on all available evidence, including service department reports, and consideration shall be given to the character and length of the veteran's former active service in the Armed Forces of the United States.

(c) A prisoner-of-war status based upon arrest during general zonification will not be sufficient of itself to bring a case within the definition of return to military control.

(d) The active service of members of the irregular forces "guerrilla" will be the period certified by the service department.

[26 FR 1566, Feb. 24, 1961, as amended at 26 FR 4612, May 26, 1961]

§ 3.10 [Reserved]

§ 3.11 Homicide.

Any person who has intentionally and wrongfully caused the death of another person is not entitled to pension, compensation, or dependency and indemnity compensation or increased pension, compensation, or dependency and indemnity compensation by reason of such death. For the purpose of this section the term "dependency and indemnity compensation" includes benefits at dependency and indemnity compensation rates paid under 38 U.S.C. 410(b).

[44 FR 22718, Apr. 17, 1979]

§ 3.12 Character of discharge.

(a) If the veteran did not die in service, pension, compensation, or dependency and indemnity compensation is not payable unless the period of service on which the claim is based was terminated by discharge or release under conditions other than dishonorable (38 U.S.C. 101(2)). A discharge under honorable conditions is binding on the Veterans Administration as to character of discharge.

(b) A discharge or release from service under one of the conditions specified in this section is a bar to the payment of benefits unless it is found that the person was insane at the time of committing the offense causing such discharge or release (38 U.S.C. 3103(b)).

(c) Benefits are not payable where the veteran was discharged or released under one of the following conditions:

(1) As a conscientious objector who refused to perform military duty, wear the uniform, or comply with lawful order of competent military authorities.

(2) By reason of the sentence of a general court-martial.

(3) Resignation by an officer for the good of the service.

(4) As a deserter.

(5) As an alien during a period of hostilities, where it is affirmatively shown that the veteran requested his or her release. See § 3.7(b).

(6) By reason of a discharge under other than honorable conditions issued as a result of an absence without official leave (AWOL) for a continuous period of at least 180 days. This bar to benefit entitlement does not apply if there are compelling circumstances to warrant the prolonged unauthorized absence. This bar applies to any person awarded an honorable or general discharge prior to October 8, 1977, under one of the programs listed in paragraph (h) of this section, and to any person who prior to October 8, 1977, had not otherwise established basic eligibility to receive Veterans Administration benefits. The term "established basic eligibility to receive Veterans Administration benefits" means either a Veterans Administration determination that an other than honorable discharge was issued under conditions other than dishonorable, or an upgraded honorable or general discharge issued prior to October 8, 1977, under criteria other than those prescribed by one of the pro-

grams listed in paragraph (h) of this section. However, if a person was discharged or released by reason of the sentence of a general court-martial, only a finding of insanity (paragraph (b) of this section) or a decision of a board of correction of records established under 10 U.S.C. 1552 can estalish basic eligibility to receive Veterans Administration benefits. The following factors will be considered in determining whether there are compelling circumstances to warrant the prolonged unauthorized absence.

(i) Length and character of service exclusive of the period of prolonged AWOL. Service exclusive of the period of prolonged AWOL should generally be of such quality and length that it can be characterized as honest, faithful and meritorious and of benefit to the Nation.

(ii) Reasons for going AWOL. Reasons which are entitled to be given consideration when offered by the claimant include family emergencies or obligations, or similar types of obligations or duties owed to third parties. The reasons for going AWOL should be evaluated in terms of the person's age, cultural background, educational level and judgmental maturity. Consideration should be given to how the situation appeared to the person himself or herself, and not how the adjudicator might have reacted. Hardship or suffering incurred during overseas service, or as a result of combat wounds of other service-incurred or aggravated disability, is to be carefully and sympathetically considered in evaluating the person's state of mind at the time the prolonged AWOL period began.

(iii) A valid legal defense exists for the absence which would have precluded a conviction for AWOL. Compelling circumstances could occur as a matter of law if the absence could not validly be charged as, or lead to a conviction of, an offense under the Uniform Code of Military Justice. For purposes of this paragraph the defense must go directly to the substantive issue of absence rather than to procedures, technicalities or formalities.

(d) A discharge or release because of one of the offenses specified in this paragraph is considered to have been issued under dishonorable conditions.

(1) Acceptance of an undesirable discharge to escape trial by general court-martial.

(2) Mutiny or spying.

(3) An offense involving moral turpitude. This includes, generally, conviction of a felony.

(4) Willful and persistent misconduct. This includes a discharge under other than honorable conditions, if it is determined that it was issued because of willful and persistent misconduct. A discharge because of a minor offense will not, however, be considered willful and persistent misconduct if service was otherwise honest, faithful and meritorious.

(5) Homosexual acts involving aggravating circumstances or other factors affecting the performance of duty. Examples of homosexual acts involving aggravating circumstances or other factors affecting the performance of duty include child molestation, homosexual prostitution, homosexual acts or conduct accompanied by assault or coercion, and homosexual acts or conduct taking place between service members of disparate rank, grade, or status when a service member has taken advantage of his or her superior rank, grade, or status.

(e) An honorable discharge or discharge under honorable conditions issued through a board for correction of records established under authority of 10 U.S.C. 1552 is final and conclusive on the Veterans Administration. The action of the board sets aside any prior bar to benefits imposed under paragraph (c) or (d) of this section.

(f) An honorable or general discharge issued prior to October 8, 1977, under authority other than that listed in paragraphs (h) (1), (2) and (3) of this section by a discharge review board established under 10 U.S.C. 1553 set aside any bar to benefits imposed under paragraph (c) or (d) of this section except the bar contained in paragraph (c)(2) of this section.

(g) An honorable or general discharge issued on or after October 8, 1977, by a discharge review board established under 10 U.S.C. 1553 sets aside any bar to benefits imposed

under paragraph (d) of this section when the following conditions are met:

(1) The discharge is upgraded as a result of an individual case review, and

(2) The discharge is upgraded under uniform published standards and procedures generally applicable to all persons administratively discharged or released from active military, naval or air service under conditions other than honorable; and such standards are historically consistent with criteria for determining honorable service and do not include any criterion for automatically granting or denying an upgraded discharge.

However, an honorable or general discharge issued on or after October 8, 1977, by a discharge review board established under 10 U.S.C. 1553 does not set aside any bar to benefits imposed under paragraph (c) of this section.

(h) An honorable or general discharge awarded under one of the following programs does not remove any bar to benefits imposed by paragraphs (c) or (d) of this section:

(1) The President's directive of January 19, 1977, initiating further action with respect to Presidential Proclamation 4313 of September 16, 1974, or

(2) The Department of Defense's special discharge review program effective April 5, 1977, or

(3) Any discharge review program implemented after April 5, 1977, and not made applicable to all persons administratively discharged or released from active military, naval, or air service under other than honorable conditions.

However, if a discharge review board established under 10 U.S.C. 1553 determines on an individual case basis, in the case of a person who was issued an honorable or general discharge under any such program after October 8, 1977, that an upgraded discharge would be awarded under standards conforming to paragraph (g) (1) and (2) of this section, that determination removes any bar to benefits imposed by paragraph (d) of this section.

(i) No overpayments shall be created as a result of payments made after October 8, 1977, based on an upgraded honorable or general discharge issued under one of the programs listed in paragraph (h) of this section which would not be awarded under the standards set forth in paragraph (g) of this section. Accounts in payment status on or after October 8, 1977, shall be terminated the end of the month in which it is determined that the original other than honorable discharge was not issued under conditions other than dishonorable following notice from the appropriate discharge review board that the discharge would not have been upgraded under the standards set forth in paragraph (g) of this section, or April 7, 1978, whichever is the earliest. Accounts in suspense (either before or after October 8, 1977) shall be terminated on the date of last payment or April 7, 1978, whichever is the earliest.

(j) No overpayment shall be created as a result of payments made after October 8, 1977, in cases in which the bar contained in paragraph (c)(6) of this section is for application. Accounts in payment status on or after October 8, 1977, shall be terminated at the end of the month in which it is determined that compelling circumstances do not exist, or April 7, 1978, whichever is the earliest. Accounts in suspense (either before or after October 8, 1977) shall be terminated on the date of last payment, or April 7, 1978, whichever is the earliest.

[28 FR 123, Jan. 4, 1963, as amended at 41 FR 12656, Mar. 26, 1976; 43 FR 15153, Apr. 11, 1978; 45 FR 2318, Jan. 11, 1980]

CROSS REFERENCES: Validity of enlistments. See § 3.14. Revision of decisions. See § 3.105. Effective dates. See § 3.400(g).

§ 3.12a Length of service requirement.

(a) *General.* Any person who enlists in a regular component of the armed forces after September 7, 1980, and who fails to complete at least 24 months of his or her original period of enlistment shall not be eligible to receive disability compensation based on the period of service of less than 24 months.

(b) *Exceptions.* The provisions of paragraph (a) of this section do not apply to the following persons:

(1) A person who was discharged under 10 U.S.C. 1173 (hardship dis-

charge) before completing 24 months of service.

(2) A person who was discharged under chapter 61 of title 10, United States Code (disability discharge) before completing 24 months of service.

(3) A person who failed to complete at least 24 months of service if it is later established that the person is suffering from an injury or disease incurred in or aggravated during the period of service of less than 24 months provided that the injury or disease was not the result of the person's willful misconduct and was not incurred during a period of unauthorized absence. (10 U.S.C. 977).

[46 FR 23926, Apr. 29, 1981]

§ 3.13 Discharge to change status.

(a) A discharge to accept appointment as a commissioned or warrant officer, or to change from a Reserve or Regular commission to accept a commission in the other component, or to reenlist is a conditional discharge if it was issued during one of the following periods:

(1) World War I; prior to November 11, 1918. As to reenlistments, this subparagraph applies only to Army and National Guard. No involuntary extension or other restrictions existed on Navy enlistments.

(2) World War II, the Korean conflict or the Vietnam era; prior to the date the person was eligible for discharge under the point or length of service system, or under any other criteria in effect.

(3) Peacetime service; prior to the date the person was eligible for an unconditional discharge.

(b) Except as provided in paragraph (c) of this section, the entire period of service under the circumstances stated in paragraph (a) of this section constitutes one period of service and entitlement will be determined by the character of the final termination of such period of active service except that, for death pension purposes, § 3.3(b)(3) and (4) is controlling as to basic entitlement when the conditions prescribed therein are met.

(c) Despite the fact that no unconditional discharge may have been issued, a person shall be considered to have been unconditionally discharged or released from active military, naval or air service when the following conditions are met:

(1) The person served in the active military, naval or air service for the period of time the person was obligated to serve at the time of entry into service;

(2) The person was not discharged or released from such service at the time of completing that period of obligation due to an intervening enlistment or reenlistment; and

(3) The person would have been eligible for a discharge or release under conditions other than dishonorable at that time except for the intervening enlistment or reenlistment.

[26 FR 1566, Feb. 24, 1961, as amended at 27 FR 4024, Apr. 27, 1962; 32 FR 13224, Sept. 19, 1967; 43 FR 15154, Apr. 11, 1978; 46 FR 23926, Apr. 29, 1981]

§ 3.14 Validity of enlistments.

Service is valid unless the enlistment is voided by the service department.

(a) *Enlistment not prohibited by statute.* Where an enlistment is voided by the service department for reasons other than those stated in paragraph (b) of this section, service is valid from the date of entry upon active duty to the date of voidance by the service department. Benefits may not be paid, however, unless the discharge is held to have been under conditions other than dishonorable. Generally discharge for concealment of a physical or mental defect except incompetency or insanity which would have prevented enlistment will be held to be under dishonorable conditions.

(b) *Statutory prohibition.* Where an enlistment is voided by the service department because the person did not have legal capacity to contract for a reason other than minority (as in the case of an insane person) or because the enlistment was prohibited by statute (a deserter or person convicted of a felony), benefits may not be paid based on that service even though a disability was incurred during such service. An undesirable discharge by reason of the fraudulent enlistment voids the enlistment from the beginning.

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(c) *Misrepresentation of age.* Active service which was terminated because of concealment of minority or misrepresentation of age is honorable if the veteran was released from service under conditions other than dishonorable. Service is valid from the date of entry upon active duty to the date of discharge.

(d) *Honorable discharges.* Determinations as to honorable service will be made by the service departments and the finding shall be binding on the Veterans Administration, but, in the case of an alien, the effect of the discharge will be governed by § 3.7(b).

[26 FR 1567, Feb. 24, 1961, as amended at 27 FR 4024, Apr. 27, 1962]

§ 3.15 Computation of service.

For non-service-connected or service-connected benefits, active service is countable exclusive of time spent on an industrial, agricultural, or indefinite furlough, time lost on absence without leave (without pay), under arrest (without acquittal), in desertion, while undergoing sentence of court-martial or a period following release from active duty under the circumstances outlined in § 3.9. In claims based on Spanish-American War service, leave authorized under General Order No. 130, War Department, is included.

[40 FR 16064, Apr. 9, 1975]

CROSS REFERENCE: Duty periods. See § 3.6(b)(6).

§ 3.16 Service pension.

In computing the 70 or 90 days required under § 3.3(a) active service which began before or extended beyond the war period will be included if such service was continuous. Broken periods of service during a war period may be added together to meet the requirement for length of service.

[41 FR 18299, May 3, 1976, as amended at 44 FR 45932, Aug. 6, 1979]

§ 3.17 Disability and death pension; Mexican border period and later war periods.

In computing the 90 days' service required for pension entitlement (see § 3.3), there will be included active service which began before and extended into the Mexican border period or ended during World War I, or began or ended during World War II, the Korean conflict or the Vietnam era, if such service was continuous. Service during different war periods may be combined with service during any other war period to meet the 90 days' service requirement. (38 U.S.C. 521; Pub. L. 92-198, 85 Stat. 663)

[37 FR 6676, Apr. 1, 1972, as amended at 44 FR 45932, Aug. 6, 1979]

§§ 3.18-3.19 [Reserved]

§ 3.20 Surviving spouse's benefit for month of veteran's death.

Where the veteran died on or after December 1, 1962, the rate of death pension, or dependency and indemnity compensation otherwise payable for the surviving spouse for the month in which the death occurred shall be not less than the amount of pension or compensation which would have been payable to or for the veteran for that month but for his or her death. (38 U.S.C. 3110)

[44 FR 22718, Apr. 17, 1979]

§ 3.21 Monetary rates.

The rates of compensation, dependency and indemnity compensation for surviving spouses and children, and section 306 and old-law disability and death pension, are published in tabular form in appendix B of the Department of Veterans Benefits Manual M21-1 and are to be given the same force and effect as if published in the regulations (Title 38, Code of Federal Regulations). The maximum annual rates of improved pension payable under Pub. L. 95-588 (92 Stat. 2497) are set forth in §§ 3.23 and 3.24. The monthly rates and annual income limitations applicable to parents' dependency and indemnity compensation are set forth in § 3.25.

[44 FR 45932, Aug. 6, 1979]

CROSS REFERENCES: Section 306 pension. See § 3.1(u).

Old-law pension. See § 3.1(v).

Improved pension. See § 3.1(w).

§ 3.22 Benefits at DIC rates in certain cases when death is not service connected.

(a) *Entitlemant criteria.* Benefits authorized by section 410(b) of title 38, United States Code shall be paid to a deceased veteran's surviving spouse (See § 3.54(c)(2)) or children in the same manner as if the veteran's death is service connected when the following conditions are met:

(1) The veteran's death was not caused by his or her own willful misconduct; and

(2) The veteran was in receipt of (or but for the receipt of military retired pay was entitled to receive) compensation at time of death for service-connected disablement that either:

(i) Was continously rated totally disabling by a schedular or unemployability rating for a period of 10 or more years immediately preceding death; or

(ii) Was continuously rated totally disabling by a schedular or unemployability rating from the date of the veteran's discharge or release from active duty for a period of not less than 5 years immediately preceding death.

(b) *Effect of judgment or settlement.* If a surviving spouse or child eligible for benefits under paragraph (a) of this section receives any money or property pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the death of the veteran, benefits payable under paragraph (a) of this section shall not be paid for any month following the month in which such money or property is received until the amount of benefits that would otherwise have been payable under paragraph (a) of this section equals the total of the amount of money received and the fair market value of the property received.

(c) *Social security and worker's compensation.* Benefits received under social security or worker's compensation are not subject to recoupment under paragraph (b) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(d) *Beneficiary's duty to report.* Any person entitled to benefits under paragraph (a) of this section shall promptly report to the Veterans Administration the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the death of the veteran. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorney's fees, may not be deducted from the amount to be reported.

(e) *Relationship to survivor benefit plan.* For the purpose of 10 U.S.C. 1448(d) and 1450(c) eligibility for benefits under paragraph (a) of this section shall be deemed eligibility for dependency and indemnity compensation under 38 U.S.C. 411(a). (38 U.S.C. 410(b))

[44 FR 22718, Apr. 17, 1979]

CROSS REFERENCES: Marriage dates. See § 3.54. Homicide. See § 3.11.

§ 3.23 Improved pension rates.

(a) *Maximum annual rates of improved pension—(1) Veterans permanently and totally disabled (38 U.S.C. 521).*

(i) Veteran with no dependents, $4,960.

(ii) Veteran with one dependent, $6,499.

(iii) For each additional dependent, $840.

(2) *Veterans in need of aid and attendance.*

(i) Veteran with no dependents, $7,936.

(ii) Veteran with one dependent, $9,474.

(iii) For each additional dependent, $840.

(3) *Veterans who are housebound.*

(i) Veteran with no dependents, $6,064.

(ii) Veteran with one dependent, $7,602.

(iii) For each additional dependent, $840.

(4) *Two veterans married to one another; combined rates.*

(i) Neither veteran in need of aid and attendance or housebound, $6,499.

(ii) Either veteran in need of aid and attendance, $9,474.

(iii) Both veterans in need of aid and attandance, $12,449.

(iv) Either veteran housebound, $7,602.

(v) Both veterans housebound; $8,705.

(vi) One veteran housebound and one veteran in need of aid and attendance, $10,577.

(vii) For each dependent child, $840.

(5) *Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 541).*

(i) Surviving spouse alone, $3,324.

(ii) Surviving spouse and one child in his of her custody, $4,354.

(iii) For each additional child in his or her custody, $840.

(6) *Surviving spouses in need of aid and attendance.*

(i) Surviving spouse alone, $5,318.

(ii) Surviving spouse with one child in his or her custody, $6,347.

(iii) For each additional child in his or her custody, $840.

(7) *Surviving spouses who are housebound.*

(i) Surviving spouse alone, $4,064.

(ii) Surviving spouse and one child in his of her custody, $5,092.

(iii) For each additional child in his or her custody, $840.

(See § 3.24 for entitlement criteria and rate applicable to a child of a deceased veteran not in custody of a surviving spouse who has basic eligibility to receive improved pension. The term "basic eligibility to receive improved pension" is defined in § 3.24)

(b) *Reduction for income.* The maximum rates of improved pension in paragraph (a) of this section shall be reduced by the amount of the countable annual income of the veteran or surviving spouse. (38 U.S.C. 521, 541).

(c) *Mexico border period and World War I veterans.* The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this section shall be increased by $1,119. (38 U.S.C. 521(g)).

(d) *Definitions of terms used in this section*—(1) *Dependent.* A veteran's spouse or child. A veteran's spouse who resides apart from the veteran and is estranged from the veteran may not be considered the veteran's dependent unless the spouse receives reasonable support contributions from the veteran. (Note that under § 3.60 a veteran and spouse who reside apart are considered to be living together unless they are estranged.) A child of a veteran not in custody of the veteran and to whose support the veteran is not reasonably contributing, may not be considered the veteran's dependent. (38 U.S.C. 521(b)).

(2) *In need of aid and attendance.* As defined in § 3.351(b).

(3) *Housebound.* As defined in § 3.351(d)(2), (f). This term also includes a veteran who has a disability or disabilities evaluated as 60 percent or more disabling in addition to a permanent and totally disabling condition. See § 3.351(d)(1).

(4) *Veteran's annual income.* This term includes the veteran's annual income, the annual income of the veteran's dependent spouse, and the annual income of each child of the veteran (other than a child for whom increased pension is not payable under 38 U.S.C. 522(b)) in the veteran's custody or to whose support the veteran is reasonably contributing (to the extent such child's income is reasonably available to or for the veteran, unless in the judgment of the Veterans Administration to do so would work a hardship on the veteran.) There is a rebuttable presumption that all of such a child's income is reasonably available to or for the veteran. (38 U.S.C. 521 (c), (h)).

(5) *Surviving spouse's annual income.* This term includes the surviving spouse's annual income and the annual income of each child of the veteran (other than a child for whom increased pension is not payable under 38 U.S.C. 543(a)(2)) in the custody of the surviving spouse to the extent that such child's income is reasonably available to or for the surviving spouse, unless in the judgment of the Veterans Administration to do so would work a hardship on the surviving spouse. There is a rebuttable presumption that all of such a child's income is available to or for the surviving spouse. (38 U.S.C. 541 (c), (h)).

[44 FR 45933, Aug. 6, 1979, as amended at 46 FR 27074, May 15, 1981]

CROSS REFERENCES: Improved pension. See § 3.1(w). Child. See § 3.57(d). Definition of "living with". See § 3.60. Exclusions from income. See § 3.272.

§ 3.24 Improved pension rates; surviving children.

(a) *General.* The provisions of this section apply to children of a deceased veteran not in the custody of a surviving spouse who has basic eligibility to receive improved pension. Children in custody of a surviving spouse who has basic eligibility to receive improved pension do not have separate entitlement. Basic eligibility to receive improved pension means that the surviving spouse is in receipt of improved pension or could become entitled to receive improved pension except for the amount of the surviving spouse's countable annual income or the size of the surviving spouse's estate (See § 3.274(c)). Under § 3.23(d)(5) the countable annual income of a surviving spouse includes the countable annual income of each child of the veteran in custody of the surviving spouse to the extent the child's income is reasonably available to or for the surviving spouse, unless in the judgment of the Veterans Administration to do so would work a hardship on the surviving spouse.

(b) *Child with no personal custodian or in the custody of an institution.* In cases in which there is no personal custodian, i.e., there is no person who has the legal right to exercise parental control and responsibility for the child's welfare (See § 3.57(d)), or the child is in the custody of an institution, pension shall be paid to the child at the annual rate of $840 reduced by the amount of the child's countable annual income.

(c) *Child in the custody of person legally responsible for support*—(1) *Single child.* Pension shall be paid to a child in the custody of a person legally responsible for the child's support at an annual rate equal to the difference between the rate for a surviving spouse and one child under § 3.23(a)(5)(ii), and the sum of the annual income of such child and the annual income of such person. The amount payable, however, may not exceed the amount by which $840 exceeds the child's countable annual income.

(2) *More than one child.* Pension shall be paid to children in custody of a person legally responsible for the children's support at an annual rate equal to the difference between the rate for a surviving spouse and an equivalent number of children (but not including any child who has countable annual income equal to or greater than $840) and the sum of the countable annual income of the person legally responsible for support and the combined countable annual income of the children (but not including the income of any child whose countable annual income is equal to or greater than $840). The combined amount payable, however, may not exceed the amount by which $840 times the number of eligible children exceeds the sum of the children countable annual income. (38 U.S.C. 542).

[44 FR 45933, Aug. 6, 1979, as amended at 46 FR 27074, May 15, 1981]

CROSS REFERENCES: Child. See § 3.57(d). Exclusions from income. See § 3.272.

§ 3.25 Parent's dependency and indemnity compensation rates.

Dependency and indemnity compensation (DIC) shall be paid monthly to parents of a deceased veteran in the following amounts. (38 U.S.C. 415)

(a) *One parent.* Except as provided in paragraph (b) of this section, if there is only one parent the monthly rate of DIC paid to such parent shall be $230 reduced on the basis of the parent's annual income according to the following formula:

For each $1 of annual income		
The $230 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	.....	$800
.05	$800	900
.07	900	1,100
.08	1,100	5,642

No DIC is payable under this paragraph if annual income exceeds $5,642.

(b) *One parent who has remarried.* If there is only one parent and the parent has remarried and is living

with the parent's spouse, DIC shall be paid under paragraph (a) or under paragraph (d) of this section, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

(c) *Two parents not living together.* The rates in this paragraph apply to: (1) Two parents who are not living together, or (2) an unremarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $163, reduced on the basis of each parent's annual income, according to the following formula:

For each $1 of annual income of each parent		
The $163 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.03	$800	1,000
.06	1,000	1,200
.07	1,200	1,600
.08	1,600	5,642

No DIC is payable under this paragraph if annual income exceeds $5,642.

(d) *Two parents living together or remarried parents living with spouses.* The rates in this paragraph apply to: (1) Each parent living with another parent; and (2) each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $154, reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

For each $1 of combined annual income		
The $154 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.02	$1,000	1,400
.03	1,400	2,000
.04	2,000	2,600
.05	2,600	3,100
.06	3,100	3,700
.07	3,700	7,587

No DIC is payable under this paragraph if combined annual income exceeds $7,587.

The rates in this paragraph are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in paragraph (a) of this section for one parent.

(e) *Aid and attendance.* The monthly rate of DIC payable to a parent under this section shall be increased by $121 if such parent is: (1) A patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

(f) *Minimum rate.* The monthly rate of DIC payable to any parent under this section shall not be less than $5.

[44 FR 45934, Aug. 6, 1979, as amended at 45 FR 31719, May 14, 1980; 46 FR 27075, May 15, 1981]

§ 3.26 Section 306 and old-law pension annual income limitations.

(a) *Section 306 pension income limitations.*

(1) Veteran or surviving spouse with no dependents, $5,642.

(2) Veteran with no dependents in need of aid and attendance (38 U.S.C. 521(d), as in effect on December 31, 1978), $6,142.

(3) Veteran or surviving spouse with one or more dependents, $7,587.

(4) Veteran with one or more dependents in need of aid and attendance (38 U.S.C. 521(d), as in effect on December 31, 1978), $8,087.

(5) Child (no entitled veteran or surviving spouse), $4,610.

(b) *Old-law pension income limitations.*

(1) Veteran or surviving spouse without dependents or an entitled child, $4,938.

(2) Veteran or surviving spouse with one or more dependents, $7,123.

[46 FR 27075, May 15, 1981]

§ 3.27 Automatic adjustment of benefit rates.

(a) *Improved pension.* Whenever there is a cost-of-living increase in benefit amounts payable under section

215(i) of Title II of the Social Security Act, the Veterans Administration shall, effective on the dates such increases become effective, increase by the same percentage each maximum annual rate of pension specified in § 3.23 and § 3.24. (38 U.S.C. 3112(a))

(b) *Parents' dependency and indemnity compensation*—(1) *Maximum annual income limitation and maximum monthly rates.* Whenever there is a cost-of-living increase in benefit amounts payable under section 215(i) of Title II of the Social Security Act, the Veterans Administration shall, effective on the dates such increases become effective, increase by the same percentage the maximum monthly rates of dependency and indemnity compensation for parents specified in § 3.25(a), (c) and (d), the monthly rate specified in § 3.25(e), and the annual income limitations prescribed in § 3.25(a), (c) and (d). (38 U.S.C. 3112(b)(1))

(2) *Formula adjustment.* Whenever there is an increase in the rates and income limitations applicable to parents' dependency and indemnity compensation under paragraph (b)(1) of this section, the Veterans Administration shall, effective on the date of such increase, adjust correspondingly the formulas for determining the rates of parents' dependency and indemnity compensation as specified in § 3.25(a) and (c) for a parent whose countable annual income is more than $800 but not more than the maximum specified therein, and in § 3.25(d) for a parent whose countable annual income is more than $1,000 but not more than the maximum specified therein. (38 U.S.C. 3112(b)(2)(A))

(c) *Publishing requirements.* Increases in pension rates and parents' dependency and indemnity compensation rates and income limitation made under this section shall be published in the FEDERAL REGISTER. (38 U.S.C. 3112(c)(1))

[44 FR 45934, Aug. 6, 1979]

§ 3.28 Automatic adjustment of section 306 and old-law pension income limitations.

Whenever the maximum rates of pension specified in § 3.23 are increased by reason of the provisions of 38 U.S.C. 3112, the following will be increased by the same percentage effective the same date:

(a) The maximum annual income limitations applicable to continued receipt of section 306 and old-law pension; and

(b) The dollar amount of a veteran's spouse's income specified in § 3.262(b)(2) as excludable in determining the income of a veteran for section 306 pension purposes.

These increases shall be published in the FEDERAL REGISTER at the same time that increases in the rates specified in §§ 3.23 and 3.24 are so published. (Section 306, Pub. L. 95-588, 92 Stat. 2497).

[44 FR 45935, Aug. 6, 1979, as amended at 45 FR 31719, May 14, 1980]

CROSS REFERENCES: Section 306 and old-law pension annual income limitations. See § 3.26.

§ 3.29 Rounding.

Where the computation of an increase in improved pension rates under §§ 3.23 and 3.24 would otherwise result in a figure which includes a fraction of a dollar, the benefit rate will be adjusted to the next higher dollar amount. This method of computation will also apply to increases in old-law and section 306 pension annual income limitations under § 3.26, including the income of a spouse which is excluded from a veteran's countable income, and parents' dependency and indemnity compensation benefit rates and annual income limitations under § 3.25. (38 U.S.C. 3112(c)(2)).

[44 FR 45935, Aug. 6, 1979]

§ 3.30 Frequency of payment of improved pension.

(a) *Monthly.* Payment shall be made monthly if the annual rate payable is $120 or more.

(b) *Quarterly.* Payment shall be made every 3 months on or about March 1, June 1, September 1, and December 1, if the annual rate payable is at least $40 but less than $120.

(c) *Semiannually.* Payment shall be made every 6 months on or about June 1, and December 1, if the annual rate

payable is at least $20 but less than $40.

(d) *Annually.* Payment shall be made annually on or about June 1, if the annual rate payable is less than $20.

(e) *Payment of less than one dollar.* Payments of less than $1 shall not be made.

[44 FR 45935, Aug. 6, 1979]

CROSS REFERENCE: Pension. See § 3.3(a)(3), (b)(4).

RELATIONSHIP

§ 3.50 Wife, widow or spouse.

(a) *Wife.* "Wife" means a person whose marriage to the veteran meets the requirements of § 3.1(j).

(b) *Widow.* Except as provided in § 3.52, "widow" means a person whose marriage to the veteran meets the requirements of § 3.1(j) and who was the lawful spouse of the veteran at the time of the veteran's death and:

(1) Who lived with the veteran continuously from the date of marriage to the date of the veteran's death except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse, and

(2) Who has not remarried or (in cases not involving remarriage) has not since the death of the veteran and after September 19, 1962, lived with another person of the opposite sex and held herself (himself) out openly to the public to be the spouse of such other person. On and after January 1, 1971, the requirement of this paragraph (b)(1) is that she (he) be unmarried and not living with another person of the opposite sex and holding herself (himself) out openly to the public as the spouse of such other person. (38 U.S.C. 101(3); Pub. L. 94-169; 89 Stat. 1013)

(c) *Spouse and surviving spouse.* "Spouse" means a person of the opposite sex who is a wife or husband and the term "surviving spouse" means a person of the opposite sex who is a widow or widower provided the marriage meets the requirements of § 3.1(j) or, as to accrued benefits, § 3.52. (38 U.S.C. 101(31); Pub. L. 94-169; 89 Stat. 1013)

[41 FR 18299, May 3, 1976]

CROSS REFERENCES: Definition, marriage. See § 3.1(j).

Marriage dates. See § 3.54.

Evidence, marriage. See § 3.205.

Discontinuance, marriage or remarriage. See § 3.500(n).

§ 3.51 Husband or widower.

(a) *General.* The term "wife" includes the husband of a female veteran and the term "widow" includes the widower of a female veteran.

(b) *Entitlement.* A husband or widower is in the same status as a wife or widow of a male veteran and is eligible to receive the same benefits, if otherwise entitled, in a claim for pension, compensation, or dependency and indemnity compensation.

(38 U.S.C. 102(b))

[38 FR 871, Jan. 5, 1973]

§ 3.52 Marriages deemed valid.

Where an attempted marriage of a claimant to the veteran was invalid by reason of a legal impediment, the marriage will nevertheless be deemed valid if:

(a) The marriage occurred 1 year or more before the veteran died or existed for any period of time if a child was born of the purported marriage or was born to them before such marriage (see § 3.54(d)), and

(b) The claimant entered into the marriage without knowledge of the impediment, and

(c) The claimant cohabited with the veteran continuously from the date of marriage to the date of his or her death as outlined in § 3.53, and

(d) No claim has been filed by a legal surviving spouse who has been found entitled to gratuitous death benefits other than accrued monthly benefits covering a period prior to the veteran's death. (38 U.S.C. 103(a))

[26 FR 1567, Feb. 24, 1961, as amended at 27 FR 1215, Feb. 9, 1962; 32 FR 13224, Sept. 19, 1967; 41 FR 18299, May 3, 1976]

CROSS REFERENCES: Definition, marriage. See § 3.205(c).

§ 3.53 Continuous cohabitation.

(a) *General.* The requirement that there must be continuous cohabitation from the date of marriage to the date

of death of the veteran will be considered as having been met when the evidence shows there was no separation due to the fault of the surviving spouse. Temporary separations which ordinarily occur, including those caused for the time being through fault of either party, will not break the continuity of the cohabitation.

(b) *Findings of fact.* The statement of the surviving spouse as to the reason for the separation will be accepted in the absence of contradictory information. If the evidence establishes that the separation was by mutual consent and that the parties lived apart for purposes of convenience, health, business, or any other reason which did not show an intent on the part of the surviving spouse to desert the veteran, the continuity of the cohabitation will not be considered as having been broken. State laws will not control in determining questions of desertion; however, due weight will be given to findings of fact in court decisions made during the life of the veteran on issues subsequently involved in the application of this section.

[41 FR 18300, May 3, 1976]

§ 3.54 Marriage dates.

A surviving spouse may qualify for pension, compensation, or dependency and indemnity compensation if the marriage to the veteran occurred before or during his or her service or, if married to him or her after his or her separation from service, before the applicable date stated in his section.

(a) *Pension.* Death pension may be paid to a surviving spouse who was married to the veteran:

(1) One year or more prior to the veteran's death, or

(2) For any period of time if a child was born of the marriage, or was born to them before the marriage, or

(3) Prior to the applicable delimiting dates, as follows:

(i) Civil War—June 27, 1905.

(ii) Indian wars—March 4, 1917.

(iii) Spanish-American War—January 1, 1938.

(iv) Mexican border period and World War I—December 14, 1944.

(v) World War II—January 1, 1957.

(vi) Korean conflict—February 1, 1965.

(vii) Vietnam era—May 8, 1985.

(38 U.S.C. 532(d), 534(c), 536(c), 541(e); Pub. L. 91-588, 84 Stat. 1580)

(b) *Compensation.* Death compensation may be paid to a surviving spouse who, with respect to date of marriage, could have qualified as a surviving spouse for death compensation under any law administered by the Veterans Administration in effect on December 31, 1957, or who was married to the veteran:

(1) Before the expiration of 15 years after termination of the period of service in which the injury or disease which caused the veteran's death was incurred or aggravated, or

(2) One year or more, or

(3) For any period of time if a child was born of the marriage, or was born to them before the marriage. (38 U.S.C. 302)

(c) *Dependency and indemnity compensation.* (1) Dependency and indemnity compensation payable under 38 U.S.C. 410(a) may be paid to the surviving spouse of a veteran who died on or after January 1, 1957, who was married to the veteran:

(i) Before the expiration of 15 years after the termination of the period of service in which the injury or disease causing the death of the veteran was incurred or aggravated, or

(ii) For 1 year or more, or

(iii) For any period of time if a child was born of the marriage, or was born to them before the marriage. (38 U.S.C. 404)

(2) In order for a surviving spouse to be entitled to benefits under section 410(b) of title 38, United States Code, in the same manner as if death is service connected, the marriage to the veteran shall have been for a period of not less than 2 years immediately preceding the date of the veteran's death. (See § 3.22). The birth of a child does not change this requirement. (38 U.S.C. 410(b))

(d) *"Child born".* The term "child born of the marriage" means a birth on or after the date of the marriage on which the surviving spouse's entitlement is predicated. The term "born to them before the marriage" means a birth prior to the date of such marriage. Either term includes a fetus advanced to the point of gestation re-

quired to constitute a birth under the law of the jurisdiction in which the fetus was delivered.

(e) *More than one marriage to veteran.* For periods commencing on or after January 1, 1958, where a surviving spouse has been married legally to a veteran more than once, the date of the original marriage will be used in determining whether the statutory requirement as to date of marriage has been met. (38 U.S.C. 103(b))

[26 FR 1567, Feb. 24, 1961, as amended at 27 FR 6498, July 10, 1962; 32 FR 13224, Sept. 19, 1967; 40 FR 16064, Apr. 9, 1975; 40 FR 48680, Oct. 17, 1975; 41 FR 18300, May 3, 1976; 44 FR 22718, Apr. 17, 1979]

§ 3.55 Terminated marital relationships.

(a) Remarriage of a surviving spouse or marriage of a child shall not bar the furnishing of benefits to such surviving spouse or to or on account of such child, if the marriage:

(1) Was void, or

(2) Has been annulled by a court having basic authority to render annulment decrees, unless it is determined by the Veterans' Administration that the annulment was obtained through fraud by either party or by collusion.

(b) On and after January 1, 1971, remarriage of a surviving spouse shall not bar the furnishing of benefits to such surviving spouse if the marriage:

(1) Has been terminated by death, or

(2) Has been dissolved by a court with basic authority to render divorce decrees unless the Veterans Administration determines that the divorce was secured through fraud by the surviving spouse or by collusion.

(c) On and after January 1, 1971, the fact that a surviving spouse has lived with another person and has held herself (himself) out openly to the public as the spouse of such other person shall not bar the furnishing of benefits to her (him) after she (he) terminates the relationship.

(d) On and after January 1, 1971, the fact that benefits to a surviving spouse may previously have been barred because her (his) conduct or a relationship into which she (he) had entered had raised an inference or presumption that she (he) had remarried or had been determined to be open and notorious adulterous cohabitation, or similar conduct, shall not bar the furnishing of benefits to such surviving spouse after she (he) terminates the conduct or relationship.

(e) On and after January 1, 1975, marriage of a child shall not bar the furnishing of benefits to or for such child if the marriage

(1) Has been terminated by death, or

(2) Has been dissolved by a court with basic authority to render divorce decrees unless the Veterans Administration determines that the divorce was secured through fraud by either party or by collusion. (38 U.S.C. 103(d), (e); Pub. L. 93-527, 88 Stat. 1702)

[40 FR 16065, Apr. 9, 1975, as amended at 44 FR 22718, Apr. 17, 1979]

CROSS REFERENCE: Evidence. See § 3.207.

§ 3.56 [Reserved]

§ 3.57 Child.

(a) *General.* (1) Except as provided in paragraph (a)(2) of this section, the term "child" of the veteran means an unmarried person who is a legitimate child, a child legally adopted before the age of 18 years, a stepchild who acquired that status before the age of 18 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death, or an illegitimate child; and

(i) Who is under the age of 18 years; or

(ii) Who, before reaching the age of 18 years, became permanently incapable of self-support; or

(iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an approved educational institution.

(2) For the purposes of determining entitlement of benefits based on a child's school attendance, the term "child" of the veteran also includes the following unmarried persons:

(i) A person who was adopted by the veteran between the ages of 18 and 23 years.

(ii) A person who became a stepchild of the veteran between the ages of 18

and 23 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death.

(b) *Stepchild.* The term means a legitimate or an illegitimate child of the veteran's spouse. A child of a surviving spouse whose marriage to the veteran is deemed valid under the provisions of § 3.52, and who otherwise meets the requirements of this section is included.

(c) *Adopted child.* Except as provided in paragraph (e) of this section, the term means a child adopted pursuant to a final decree of adoption, a child adopted pursuant to an unrescinded interlocutory decree of adoption while remaining in the custody of the adopting parent (or parents) during the interlocutory period, and a child who has been placed for adoption under an agreement entered into by the adopting parent (or parents) with any agency authorized under law to so act, unless and until such agreement is terminated, while the child remains in the custody of the adopting parent (or parents) during the period of placement for adoption under such agreement. The term includes, as of the date of death of a veteran, such a child who:

(1) Was living in the veteran's household at the time of the veteran's death, and

(2) Was adopted by the veteran's spouse under a decree issued within 2 years after August 25, 1959, or the veteran's death whichever is later, and

(3) Was not receiving from an individual other than the veteran or the veteran's spouse, or from a welfare organization which furnishes services or assistance for children, recurring contributions of sufficient size to constitute the major portion of the child's support. (38 U.S.C. 101(4).)

(d) *Definition of "child custody".* The provisions of this paragraph are for the purpose of determining entitlement to improved pension under §§ 3.23 and 3.24.

(1) Custody of a child shall be considered to rest with a veteran, surviving spouse of a veteran or person legally responsible for the child's support if that person has the legal right to exercise parental control and responsibility for the welfare and care of the child. A child of the veteran residing with the veteran, surviving spouse of the veteran who is the child's natural or adoptive parent, or person legally responsible for the child's support shall be presumed to be in the custody of that individual. Where the veteran, surviving spouse, or person legally responsible for the child's support has not been divested of legal custody, but the child is not residing with that individual, the child shall be considered in the custody of the individual for purposes of Veterans Administration benefits.

(2) The term "person legally responsible for the child's support" means a person who is under a legally imposed obligation (e.g., by statute or court order) to provide for the child's support, as well as a natural or adoptive parent who has not been divested of legal custody. If the child's natural or adoptive parent has remarried, the stepparent may also be considered a person legally responsible for the child's support. A child shall be considered in the joint custody of his or her stepparent and natural or adoptive parent so long as the natural or adoptive parent and the stepparent are not estranged and residing apart, and the natural or adoptive parent has not been divested of legal custody. When a child is in such joint custody the combined income of the natural or adoptive parent and the stepparent shall be included as income of the person legally responsible for support under § 3.24(c).

(3) A person having custody of a child prior to the time the child attains age 18 shall be considered to retain custody of the child for periods on and after the child's 18th birthday, unless the person is divested of legal custody. This applies without regard to when a child reaches the age of majority under applicable State law. This also applies without regard to whether the child was entitled to pension prior to age 18, or whether increased pension was payable to a veteran or surviving spouse on behalf of the child prior to the child's 18th birthday. If the child's custodian dies after the child has attained age 18, the child shall be considered to be in custody of

a successor custodian provided the successor custodian has the right to exercise parental control and responsibility for the welfare and care of the child. (38 U.S.C. 210(c), 521(c), 541(c)).

(e) *Child adopted under foreign law*—(1) *General.* The provisions of this paragraph are applicable to a person adopted under the laws of any jurisdiction other than a State. The term "State" is defined in 38 U.S.C. 101(20) and also includes the Commonwealth of the Northern Mariana Islands. The term "veteran" includes, for the purposes of this paragraph, a Commonwealth Army veteran or new Philippine Scout as defined in 38 U.S.C. 1766.

(2) *Adopted child of living veteran.* A person residing outside any of the States shall not be considered to be a legally adopted child of a veteran during the lifetime of the veteran unless all of the following conditions are met.

(i) The person was less than 18 years of age at the time of adoption.

(ii) The person is receiving one-half or more of the person's support from the veteran.

(iii) The person is not in the custody of the person's natural parent unless the natural parent is the veteran's spouse.

(iv) The person is residing with the veteran (or in the case of divorce following adoption, with the divorced spouse who is also a natural or adoptive parent) except for periods during which the person is residing apart from the veteran for purposes of full-time attendance at an educational institution or during which the person or the veteran is confined in a hospital, nursing home, other health-care facility, or other institution.

(3) *Adopted child of deceased veteran.* A person shall not be considered to have been a legally adopted child of a veteran as of the date of the veteran's death and thereafter unless one of the following conditions is met.

(i) The veteran was entitled to and was receiving for the person a dependent's allowance or similar monetary benefit payable under title 38, United States Code at any time within the 1-year period immediately preceding the veteran's death; or

(ii) The person met the requirements of paragraph (e)(2) of this section for a period of at least 1 year prior to the veteran's death.

(4) *Verification.* In the case of an adopted child of a living veteran, the requirements of paragraph (e)(2) (ii), (iii) and (iv) of this section are for prospective application. That is, in addition to meeting all of the requirements of paragraph (e)(2) of this section at the time of initial adjudication, benefits are not payable thereafter for or to a child adopted under the laws of any jurisdiction other than a State unless the requirements of paragraph (e)(2) (ii), (iii) and (iv) of this section continue to be met. Consequently, whenever Veterans Administration benefits are payable to or for a child adopted under the laws of any jurisdiction other than a State, and the veteran who adopted the child is living, the beneficiary shall submit, upon Veterans Administration request, a report, or other evidence, to determine if the requirements of paragraph (e)(2) (ii), (iii), and (iv) of this section were met for any period for which payment was made for or to the child and whether such requirements will continue to be met for future entitlement periods. Failure to submit the requested report or evidence within a reasonable time from date of request may result in termination of benefits payable for or to the child. (38 U.S.C. 101(4), 210(c))

[44 FR 45935, Aug. 6, 1979 and 45 FR 1878, Jan. 9, 1980, as amended at 45 FR 25391, Apr. 15, 1980]

CROSS REFERENCES: Improved pension rates. See § 3.23. Improved pension rates—surviving children. See § 3.24. Child's relationship. See § 3.210. Helplessness. See § 3.403(a). Helplessness. See § 3.503(c). School attendance. See § 3.667. Helpless children—Spanish-American and prior wars. See § 3.950.

§ 3.58 Child adopted out of family.

A child of a veteran adopted out of the family of the veteran either prior or subsequent to the veteran's death is nevertheless a "child" within the meaning of that term as defined by § 3.57 and is eligible for benefits payable under all laws administered by the Veterans Administration.

[26 FR 1568, Feb. 24, 1961]

CROSS REFERENCE: Veteran's benefits not apportionable. See § 3.458.

§ 3.59 Parent.

(a) The term "parent" means a natural mother or father (including the mother of an illegitimate child or the father of an illegitimate child if the usual family relationship existed), mother or father through adoption, or a person who for a period of not less than 1 year stood in the relationship of a parent to a veteran at any time before his or her entry into active service.

(b) Foster relationship must have begun prior to the veteran's 21st birthday. Not more than one father and one mother, as defined, will be recognized in any case. If two persons stood in the relationship of father or mother for 1 year or more, the person who last stood in such relationship before the veteran's last entry into active service will be recognized as the "parent". (38 U.S.C. 101(5))

[26 FR 1568, Feb. 24, 1961, as amended at 44 FR 45935, Aug. 6, 1979]

§ 3.60 Definition of "living with".

For the purposes of determining entitlement to pension under 38 U.S.C. 521, a person shall be considered as living with his or her spouse even though they reside apart unless they are estranged. (38 U.S.C. 521(h)(2)).

[44 FR 45935, Aug. 6, 1979]

ADMINISTRATIVE

§ 3.100 Delegations of authority.

(a) Authority is delegated to the Chief Benefits Director and to supervisory or adjudicative personnel within the jurisdiction of the Department of Veterans Benefits designated by him to make findings and decisions under the applicable laws, regulations, precedents, and instructions, as to entitlement of claimants to benefits under all laws administered by the Veterans Administration governing the payment of monetary benefits to veterans and their dependents, within the jurisdiction of Compensation and Pension Service.

(b) Authority is delegated to the Chief Benefits Director to establish annual income limitations for the purposes of § 3.251(a)(2) based on service defined in § 3.8 (b), (c), or (d) at a rate in Philippine pesos equivalent to $0.50 for each dollar.

(c) Authority is delegated to the Director, Compensation and Pension Service, and to personnel of that service designated by him to determine whether a claimant or payee has forfeited the right to gratuitious benefits pursuant to the provisions of 38 U.S.C. 3503 or 3504. See § 3.905. (38 U.S.C. 212(a))

[29 FR 7547, June 12, 1964, as amended at 31 FR 14455, Nov. 10, 1966; 37 FR 10442, May 23, 1972; 37 FR 19132, Sept. 19, 1972]

§ 3.101 Decisions to conform.

All decisions will conform to the laws, regulations, Administrator's decisions, and defined policies as enunciated by the Administrator. All opinions of the General Counsel which constitute a precedent are contained in Administrator's decisions or opinions which are approved by the Administrator. Conclusions reached in individual cases are frequently influenced by peculiar facts or local statutes and, consequently, will not be followed as precedents. However, where it is apparent beyond question that the situation is identical, such conclusions may be followed as a matter of consistency in the adjudication of claims under the law or regulations applicable.

[26 FR 1568, Feb. 24, 1961]

§ 3.102 Reasonable doubt.

It is the defined and consistently applied policy of the Veterans Administration to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists by reason of the fact that the evidence does not satisfactorily prove or disprove the claim, yet a sub-

stantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence; the claimant is required to submit evidence sufficient to justify a belief in a fair and impartial mind that his claim is well grounded. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not a justifiable basis for denying the application of the reasonable doubt doctrine if the entire, complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships.

[26 FR 1568, Feb. 24, 1961]

§ 3.103 Due process—procedural and appellate rights with regard to disability and death benefits and related relief.

(a) *Statement of policy.* Proceedings before the Veterans Administration are ex parte in nature. It is the obligation of the Veterans Administration to assist a claimant in developing the facts pertinent to his claim and to render a decision which grants him every benefit that can be supported in law while protecting the interests of the Government. This principle and the other provisions of this section apply to all claims for benefits and relief and decisions thereon within the purview of this part.

(b) *Submission of evidence.* Any evidence whether documentary, testimonial, or in other form, offered by a claimant in support of a claim and any issue he may raise and contention and argument he may offer with respect thereto are to be included in the records.

(c) *Hearings.* Upon request a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of this part. The Veterans Administration will provide the place of hearing in the Veterans Administration office having original jurisdiction over the claim or at the Veterans Administration office nearest his home having adjudicative functions and will provide Veterans Administration personnel who have original determinative authority of such issues to be responsible for the preparation of the transcript; however, further expenses involved will be the responsibility of the claimant. The claimant is entitled to produce witnesses and all testimony will be under oath or affirmation. The purpose of such a hearing is to permit the claimant to introduce into the record in person any evidence available to him which he may consider material and any arguments and contentions with respect to the facts and applicable law which he may consider pertinent. It is the responsibility of the Veterans Administration personnel conducting the hearing to explain fully the issues and to suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to his position. It is their further responsibility to establish and preserve the record. Because of this and to assure clarity and understanding therein, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence and to discredit testimony. In cases in which the nature, origin, or degree of disability is in issue, the claimant may request visual examination by the physician designated by the Veterans Administration as a participant in the hearing and his observations will be read into the record.

(d) *Representation.* Within the provisions and criteria of §§ 14.626 through 14.663 of this chapter a claimant is entitled to representation of his choice at every stage in the prosecution of a claim.

(e) *Notification of decisions.* The claimant will be notified of any decision affecting the payment of benefits or granting relief. Notice will include the reason for the decision and the date it will be effectuated as well as the right to a hearing subject to paragraph (c) of this section. The notification will also advise the claimant of his right to initiate an appeal by filing a Notice of Disagreement which will

entitle him to a Statement of the case for his assistance in perfecting his appeal. Further, the notice will advise him of the periods in which an appeal must be initiated and perfected. (See Part 19, Subpart B of this chapter on appeals.)

[37 FR 14780, July 25, 1972]

§ 3.104 Finality of decisions.

(a) The decision of a duly constituted rating agency or other agency of original jurisdiction on which an action was predicated will be final and binding upon all field offices of the Veterans Administration as to conclusions based on evidence on file at that time and will not be subject to revision on the same factual basis except by duly constituted appellate authorities or except as provided in § 3.105. See §§ 19.153 and 19.154 of this chapter.

(b) Current determinations of line of duty, character of discharge, relationship, dependency, domestic relations questions, homicide, and findings of fact of death or presumptions of death made in accordance with existing instructions, and by application of the same criteria and based on the same facts, by either an Adjudication activity or an Insurance activity are binding one upon the other in the absence of clear and unmistakable error.

[29 FR 1462, Jan. 29, 1964, as amended at 29 FR 7547, June 12, 1964]

§ 3.105 Revision of decisions.

The provisions of this section apply except where an award was based on an act of commission or omission by the payee, or with his knowledge (§ 3.500(b)); there is a change in law or a Veterans Administration issue, or a change in interpretation of law or a Veterans Administration issue (§ 3.114); or the evidence establishes that service connection was clearly illegal. The provisions with respect to the date of discontinuance of benefits are applicable to running awards. Where the award has been suspended, and it is determined that no additional payments are in order, the award will be discontinued effective date of last payment.

(a) *Error.* Previous determinations on which an action was predicated, including decisions of service connection, degree of disability, age, marriage, relationship, service, dependency, line of duty, and other issues, will be accepted as correct in the absence of clear and unmistakable error. Where evidence establishes such error, the prior decision will be reversed or amended. For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of § 3.500(b)(2) will apply.

(b) *Difference of opinion.* Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office.

(c) *Character of discharge.* A determination as to character of discharge or line of duty which would result in discontinued entitlement is subject to the provisions of paragraph (d) of this section.

(d) *Severance of service connection.* Subject to the limitations contained in §§ 3.114 and 3.957, service connection will be severed only where evidence establishes that it is clearly and unmistakably erroneous (the burden of proof being upon the Government). (Where service connection is severed because of a change in or interpretation of a law or Veterans Administration issue, the provisions of § 3.114 are for application.) A change in diagnosis may be accepted as a basis for severance action if the examining physician or physicians or other proper medical authority certifies that, in the light of all accumulated evidence, the diagnosis on which service connection was predicated is clearly erroneous. This certification must be accompanied by a summary of the facts, findings, and reasons supporting the conclusion. When severance of service connection is considered warranted, a rating pro-

posing severance will be prepared setting forth all material facts and reasons. The claimant will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor and will be given 60 days for the presentation of additional evidence to show that service connection should be maintained. If additional evidence is not received within that period, rating action will be taken and the award will be discontinued effective the last day of the month in which the 60-day period expired. (38 U.S.C. 3012(b)(6)).

(e) *Reduction in evaluation; compensation.* Where the reduction in evaluation of a service-connected disability or employability status is considered warranted and the lower evaluation would result in a reduction or discontinuance of compensation payments currently being made, rating action will be taken. The reduction will be made effective the last day of the month in which a 60-day period from date of notice to the payee expires. The veteran will be notified at his or her latest address of record of the action taken and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. (38 U.S.C. 3012(b)(6)).

(f) *Reduction in evaluation; pension.* Where a reduction in evaluation is considered warranted because of a change in non-service-connected disability or employability and the lower evaluation would result in a reduction or discontinuance of pension payments currently being made, the award will be reduced or discontinued effective the last day of the month in which reduction or discontinuance of the award is approved. The veteran will be notified at his or her latest address of record of the action taken and furnished detailed reasons therefor, and the conditions under which his claim may be reopened. (38 U.S.C. 3012(b)(5)).

[26 FR 1569, Feb. 24, 1961, as amended at, 27 FR 11886, Dec. 1, 1962; 39 FR 17222, May 14, 1974]

CROSS REFERENCES: Effective dates. See § 3.400. Reductions and discontinuances. See § 3.500. Protection; service connection. See § 3.957.

§ 3.106 Renouncement.

(a) Any person entitled to pension, compensation, or dependency and indemnity compensation under any of the laws administered by the Veterans Administration may renounce his or her right to that benefit but may not renounce less than all of the component items which together comprise the total amount of the benefit to which the person is entitled nor any fixed monetary amounts less than the full amount of entitlement. The renouncement will be in writing over the person's signature. Upon receipt of such renouncement in the Veterans Administration, payment of such benefits and the right thereto will be terminated, and such person will be denied any and all rights thereto from such filing. (38 U.S.C. 3106(a)).

(b) The renouncement will not preclude the person from filing a new application for pension, compensation, or dependency and indemnity compensation at any future date. Such new application will be treated as an original application, and no payments will be made thereon for any period before the date such new application is received in the Veterans Administration. (38 U.S.C. 3106(b)).

(c) The renouncement of dependency and indemnity compensation by one beneficiary will not serve to increase the rate payable to any other beneficiary in the same class.

(d) The renouncement of dependency and indemnity compensation by a widow will not serve to vest title to this benefit in children under the age of 18 years or to increase the rate payable to a child or children over the age of 18 years.

[26 FR 1569, Feb. 24, 1961, as amended at 37 FR 5384, Mar. 15, 1972; 39 FR 17222, May 14, 1974]

§ 3.107 Awards where all dependents do not apply.

Except as provided in § 3.251(a)(4), in any case where claim has not been filed by or on behalf of all dependents who may be entitled, the awards (original or amended) for those dependents who have filed claim will be made for all periods at the rates and in the same manner as though there

were no other dependents. However, if the file reflects the existence of other dependents who have not filed claim and there is potential entitlement to benefits for a period prior to the date of filing claim, the award to a person who has filed claim will be made at the rate which would be payable if all dependents were receiving benefits. If at the expiration of the period allowed, claims have not been filed for such dependents, the full rate will be authorized for the first payee.

[29 FR 9564, July 15, 1964]

§ 3.108 State Department as agent of Veterans Administration.

Diplomatic and consular officers of the Department of State are authorized to act as agents of the Veterans Administration and therefore a formal or informal claim or evidence submitted in support of a claim filed in a foreign country will be considered as filed in the Veterans Administration as of the date of receipt by the State Department representative.

[26 FR 1569, Feb. 24, 1961]

CROSS REFERENCE: Evidence from foreign countries. See § 3.202.

§ 3.109 Time limit.

(a) *Notice of time limit for filing evidence.* (1) If a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application. If the evidence is not received within 1 year from the date of such notification, pension, compensation, or dependency and indemnity compensation may not be paid by reason of that application (38 U.S.C. 3003(a)). Information concerning the whereabouts of a person who has filed claim is not considered evidence.

(2) The provisions of this paragraph are applicable to original applications, formal or informal, and to applications for increased benefits by reason of increased disability, age, or the existence of a dependent and to applications for reopening or resumption of payments. If substantiating evidence is required with respect to the veracity of a witness or the authenticity of documentary evidence timely filed, there will be allowed for the submission of such evidence 1 year from the date of the request therefor. However, any evidence to enlarge the proofs and evidence originally submitted is not so included.

(b) *Failure to furnish claim form or notice of time limit.* Failure to furnish a potential claimant any form or information concerning the right to file claim for pension, compensation, or dependency and indemnity compensation, or to furnish notice of the time limit for the filing of a claim or submission of evidence will not extend the periods allowed for these actions. As to appeals, see § 19.110 of this chapter.

[26 FR 1569, Feb. 24, 1961, as amended at 26 FR 2231, Mar. 16, 1961; 29 FR 1462, Jan. 29, 1964; 30 FR 133, Jan. 7, 1965]

§ 3.110 Computation of time limit.

In computing the time limit for any action required of a claimant, including the filing of claims or evidence requested by the Veterans Administration, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

[28 FR 29, Jan. 1, 1963]

§ 3.111 [Reserved]

§ 3.112 Fractions of one cent.

In all cases where the amount to be paid under any award involves a fraction of a cent, the fractional part will be excluded.

[26 FR 1570, Feb. 24, 1961]

§ 3.113 Signature by mark.

All signatures by mark or thumbprint must be:

(a) Witnessed by two persons who can write and who have signed their names and addresses; or

(b) Certified by a notary public or other person having authority to administer oaths for general purposes; or

(c) Certified by a Veterans Administration employee under authority of

80-118 O—82——10

Veterans Administration Form 4505 series.

[27 FR 4365, May 8, 1962]

§ 3.114 Change of law or Veterans Administration issue.

(a) *Effective date of awards.* Where pension, compensation, or dependency and indemnity compensation is awarded or increased pursuant to a liberalizing law or a liberalizing Veterans Administration issue, approved by the Administrator or by his direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue.

(1) If a claim is reviewed on the initiative of the Veterans Administration within 1 year from the effective date of the law or Veterans Administration issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or Veterans Administration issue.

(2) If a claim is reviewed on the initiative of the Veterans Administration more than 1 year after the effective date of the law or Veterans Administration issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or Veterans Administration issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request. (38 U.S.C. 3010(g); Pub. L. 87-825)

(b) *Discontinuance of benefits.* Where the reduction or discontinuance of an award is in order because of a change in law or a Veterans Administration issue, or because of a change in interpretation of a law or Veterans Administration issue, the payee will be notified at his latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired. (38 U.S.C. 3012 (b)(6); Pub. L. 87-825)

[27 FR 11886, Dec. 1, 1962]

Claims

§ 3.150 Forms to be furnished.

(a) Upon request made in person or in writing by any person applying for benefits under the laws administered by the Veterans Administration, the appropriate application form will be furnished. (38 U.S.C. 3002)

(b) Upon receipt of notice of death of a veteran, the appropriate application form will be forwarded for execution by or on behalf of any dependent who has apparent entitlement to pension, compensation, or dependency and indemnity compensation. If it is not indicated that any person would be entitled to such benefits, but there is payable an accrued benefit not paid during the veteran's lifetime, the appropriate application form will be forwarded to the preferred dependent. Notice of the time limit will be included in letters forwarding applications for benefits.

(c) When disability or death is due to Veterans Administration hospital treatment, training, medical or surgical treatment, or examination, a specific application for benefits will not be initiated.

[26 FR 1570, Feb. 14, 1961, as amended at 30 FR 133, Jan. 7, 1965]

Cross Reference: Failure to furnish claim form or notice of time limit. See § 3.109(b).

§ 3.151 Claims for disability benefits.

A specific claim in the form prescribed by the Administrator must be filed in order for benefits to be paid to any individual under the laws administered by the Veterans Administration (38 U.S.C. 3001(a)). A claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit.

[26 FR 1570, Feb. 24, 1961]

Cross Reference: Informal claims. See § 3.155(b).

§ 3.152 Claims for death benefits.

(a) A specific claim in the form prescribed by the Administrator (or jointly with the Secretary of Health, Education, and Welfare, as prescribed by § 3.153) must be filed in order for death benefits to be paid to any individual under the laws administered by the Veterans Administration. (38 U.S.C. 3001(a))

(b)(1) A claim by a widow or child for compensation or dependency and indemnity compensation will also be considered to be a claim for death pension and accrued benefits, and a claim by a widow or child for death pension will be considered to be a claim for death compensation or dependency and indemnity compensation and accrued benefits. (38 U.S.C. 3001(b)(1))

(2) A claim by a parent for compensation or dependency and indemnity compensation will also be considered to be a claim for accrued benefits. (38 U.S.C. 3001(b)(2))

(c)(1) Where a child's entitlement to dependency and indemnity compensation arises by reason of termination of a widow's right to dependency and indemnity compensation or by reason of attaining the age of 18 years, a claim will be required (38 U.S.C. 3010(e)). See paragraph (c)(4) of this section. Where the award to the widow is terminated by reason of her death, a claim for the child will be considered a claim for any accrued benefits which may be payable.

(2) A claim filed by a widow who does not herself have entitlement will be accepted as a claim for a child or children in her custody named in the claim.

(3) Where a claim of a widow is disallowed for any reason whatsoever and where evidence requested in order to determine entitlement of a child or children named in the widow's claim is submitted within 1 year from date of request, requested either before or after disallowance of the widow's claim, an award for the child or children will be made as though the disallowed claim had been filed solely on their behalf. Otherwise, payments may not be made for the child or children for any period prior to the date of receipt of a new claim.

(4) Where payments of pension, compensation or dependency and indemnity compensation to a widow have been discontinued because of remarriage or death, or a child becomes eligible for dependency and indemnity compensation by reason of attaining the age of 18 years, and any necessary evidence is submitted within 1 year from date of request, an award for the child or children named in the widow's claim will be made on the basis of the widow's claim having been converted to a claim on behalf of the child. Otherwise, payments may not be made for any period prior to the date of receipt of a new claim.

[26 FR 1570, Feb. 24, 1961, as amended at 30 FR 133, Jan. 7, 1965]

CROSS REFERENCES: State Department as agent of Veterans Administration. See § 3.108.

Change in status of dependents. See § 3.651.

§ 3.153 Claims filed with Social Security.

An application on a form jointly prescribed by the Administrator and the Secretary of Health, Education, and Welfare filed with the Social Security Administration on or after January 1, 1957, will be considered a claim for death benefits, and to have been received in the Veterans Administration as of the date of receipt in Social Security Administration. The receipt of such an application (or copy thereof) by the Veterans Administration will not preclude a request for any necessary evidence. (38 U.S.C. 3005)

[26 FR 1570, Feb. 24, 1961]

§ 3.154 Injury due to hospital treatment, etc.

A formal claim for pension, compensation, dependency and indemnity compensation or any statement in a communication showing an intent to file a claim for disability or for death benefits resulting from the pursuit of a course of vocational rehabilitation, hospitalization, medical or surgical treatment, or examination under Veterans Administration laws may be accepted as a claim. (38 U.S.C. 351; sec. 3, Pub. L. 87-825)

[27 FR 11887, Dec. 1, 1962]

CROSS REFERENCES: Effective dates. See § 3.400.

Disability or death due to hospitalization, etc. See § 3.800(a).

§ 3.155 Informal claims.

(a) Any communication or action, indicating an intent to apply for one or more benefits under the laws administered by the Veterans Administration, from a claimant, his duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not sui juris may be considered an informal claim. Such informal claim must identify the benefit sought. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for execution. If received within 1 year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim.

(b) A communication received from a service organization, an attorney, or agent may not be accepted as an informal claim if a power of attorney was not executed at the time the communication was written.

(c) When a claim has been filed which meets the requirements of § 3.151 or § 3.152, an informal application for increase or reopening will be accepted as a claim.

[26 FR 1570, Feb. 24, 1961]

CROSS REFERENCE: State Department as agent of Veterans Administration. See § 3.108.

§ 3.156 New and material evidence.

(a) New and material evidence received prior to the expiration of the appeal period, or prior to the appellate decision, will be considered as having been filed in connection with the claim which was pending at the beginning of the appeal period.

(b) Where the new and material evidence consists of a supplemental report from the service department, received before or after the decision has become final, the former decision will be reconsidered by the adjudicating agency of original jurisdiction. This comprehends official service department records which presumably have been misplaced and have now been located and forwarded to the Veterans Administration. Also included are corrections by the service department of former errors of commission or omission in the preparation of the prior report or reports and identified as such. The retroactive evaluation of disability resulting from disease or injury subsequently service connected on the basis of the new evidence from the service department must be supported adequately by medical evidence. Where such records clearly support the assignment of a specific rating over a part or the entire period of time involved, a retroactive evaluation will be assigned accordingly except as it may be affected by the filing date of the original claim.

[27 FR 11887, Dec. 1, 1962]

CROSS REFERENCES: Effective dates—general. See § 3.400.

Correction of military records. See § 3.400(g).

§ 3.157 Report of examination or hospitalization as claim for increase or to reopen.

(a) *General.* Effective date of pension or compensation benefits, if otherwise in order, will be the date of receipt of a claim or the date when entitlement arose, whichever is the later. A report of examination or hospitalization which meets the requirements of this section will be accepted as an informal claim for benefits under an existing law or for benefits under a liberalizing law or Veterans Administration issue, if the report relates to a disability which may establish entitlement. Acceptance of a report of examination or treatment as a claim for increase or to reopen is subject to the requirements of § 3.114 with respect to action on Veterans Administration initiative or at the request of the claimant and the payment of retroactive benefits from the date of the report or for a period of 1 year prior to the date of receipt of the report. (38 U.S.C. 3010(a); Pub. L. 87-825).

(b) *Claim.* Once a formal claim for pension or compensation has been allowed or a formal claim for compensation disallowed for the reason that the service-connected disability is not compensable in degree, receipt of one of the following will be accepted as an in-

formal claim for increased benefits or an informal claim to reopen. In addition, receipt of one of the following will be accepted as an informal claim in the case of a retired member of a uniformed service whose formal claim for pension or compensation has been disallowed because of receipt of retirement pay. The evidence listed will also be accepted as an informal claim for pension previously denied for the reason the disability was not permanently and totally disabling.

(1) *Report of examination or hospitalization by Veterans Administration or uniformed services.* The date of outpatient or hospital examination or date of admission to a Veterans Administration or uniformed services hospital will be accepted as the date of receipt of a claim. The date of a uniformed service examination which is the basis for granting severance pay to a former member of the Armed Forces on the temporary disability retired list will be accepted as the date of receipt of claim. The date of admission to a non-Veterans Administration hospital where a veteran was maintained at Veterans Administration expense will be accepted as the date of receipt of a claim, if Veterans Administration maintenance was previously authorized; but if Veterans Administration maintenance was authorized subsequent to admission, the date the Veterans Administration received notice of admission will be accepted.

(2) *Evidence from a private physician or layman.* The date of receipt of such evidence will be accepted when the evidence furnished by or in behalf of the claimant is within the competence of the physician or lay person and shows the reasonable probability of entitlement to benefits. Except where the statement of a private physician meets the requirements of § 3.326(d), the evidence must be verified by official examination prior to granting benefits.

(3) *State and other institutions.* When submitted by or on behalf of the veteran and entitlement is shown, date of receipt by the Veterans Administration of examination reports, clinical records, and transcripts of records will be accepted as the date of receipt of a claim if received from State, county, municipal, recognized private institutions, or other Government hospitals (except those described in paragraph (b)(1) of this section). These records must be authenticated by an appropriate official of the institution. Benefits will be granted if the records are adequate for rating purposes; otherwise findings will be verified by official examination. Reports received from private institutions not listed by the American Hospital Association must be certified by the Chief Medical Officer of the Veterans Administration or physician designee.

[26 FR 1571, Feb. 24, 1961, as amended at 27 FR 4421, May 9, 1962; 31 FR 12055, Sept. 15, 1966; 40 FR 56434, Dec. 3, 1975; 41 FR 53797, Dec. 9, 1976]

§ 3.158 Abandoned claims.

(a) *General.* Where evidence requested in connection with an original claim, a claim for increase or to reopen or for the purpose of determining continued entitlement is not furnished within 1 year after the date of request, the claim will be considered abandoned. After the expiration of 1 year, further action will not be taken unless a new claim is received. Should the right to benefits be finally established, pension, compensation, or dependency and indemnity compensation based on such evidence shall commence not earlier than the date of filing the new claim.

(b) *Veterans Administration examinations.* Where the veteran fails without adequate reason to respond to an order to report for Veterans Administration examination within 1 year from the date of request and payments have been discontinued, the claim for such benefits will be considered abandoned.

(c) *Disappearance.* Where payments of pension, compensation, or dependency and indemnity compensation have not been made or have been discontinued because a payee's present whereabouts is unknown, payments will be resumed effective the day following the date of last payment if entitlement is otherwise established, upon receipt of a valid current address.

[27 FR 11887, Dec. 1, 1962, as amended at 28 FR 13362, Dec. 10, 1963]

CROSS REFERENCES: Determinations of domestic status and dependency. See § 3.653.
Failure to report for Veterans Administration examination. See § 3.655.
Disappearance of veteran. See § 3.656.

§ 3.159 [Reserved]

§ 3.160 Status of claims.

The following definitions are applicable to claims for pension, compensation, and dependency and indemnity compensation.

(a) *Informal claim.* See § 3.155.

(b) *Original claim.* An initial formal application on a form prescribed by the Administrator. (See §§ 3.151, 3.152).

(c) *Pending claim.* An application, formal or informal, which has not been finally adjudicated.

(d) *Finally adjudicated claim.* An application, formal or informal, which has been allowed or disallowed by the agency of original jurisdiction, the action having become final by the expiration of 1 year after the date of notice of an award or disallowance, or by denial on appellate review, whichever is the earlier. (See §§ 19.153 and 19.154 of this chapter.)

(e) *Reopened claim.* Any application for a benefit received after final disallowance of an earlier claim.

(f) *Claim for increase.* Any application for an increase in rate of a benefit being paid under a current award, or for resumption of payments previously discontinued.

[27 FR 11887, Dec. 1, 1962, as amended at 31 FR 12056, Sept. 15, 1966]

EVIDENCE REQUIREMENTS

§ 3.200 Testimony certified or under oath.

(a) All oral testimony presented by claimants and witnesses on their behalf before any rating or authorization body will be under oath or affirmation. (See § 3.103(c).)

(b) All written testimony submitted by the claimant or in his or her behalf for the purpose of establishing a claim for service connection will be certified or under oath or affirmation. This includes records, examination reports, and transcripts material to the issue received by the Veterans Administration at the instance of the claimant or in his or her behalf or requested by the Veterans Administration from State, county, municipal, recognized private institutions, and contract hospitals.

[40 FR 36329, Aug. 20, 1975]

§ 3.201 Exchange of evidence; Social Security and Veterans Administration.

(a) Evidence received in the Social Security Administration in support of a claim filed on or after January 1, 1957, for benefits under Title II of the Social Security Act will be considered to have been received in the Veterans Administration as of the date of receipt in the Social Security Administration. Where such evidence is needed in a claim for dependency and indemnity compensation, a copy or certification will be requested from the Social Security Administration.

(b) A copy or certification of evidence filed in the Veterans Administration in support of a claim for dependency and indemnity compensation will be furnished the Social Security Administration upon request from the agency. (38 U.S.C. 3005)

[26 FR 1571, Feb. 24, 1961]

CROSS REFERENCE: Claims filed with Social Security. See § 3.153.

§ 3.202 Evidence from foreign countries.

(a) Except as provided in paragraph (b) of this section, where an affidavit or other document is required to be executed under oath before an official in a foreign country, the signature of that official must be authenticated by a United States Consular Officer in that jurisdiction or by the State Department. Where the United States has no consular representative in a foreign country, such authentication may be made as follows:

(1) By a consular agent of a friendly government whereupon the signature and seal of the official of the friendly government may be authenticated by the State Department; or

(2) By the nearest American consul who will attach a certificate showing the result of the investigation concerning its authenticity.

(b) Authentication will not be required:

(1) On documents approved by the Deputy Minister of Veterans Affairs, Department of Veterans Affairs, Ottawa, Canada: or

(2) When it is indicated that the attesting officer is authorized to administer oaths for general purposes and the document bears his or her signature and seal; or

(3) When the document is executed before a Veterans Administration employee authorized to administer oaths; or

(4) When a copy of a public or church record from any foreign country purports to establish birth, adoption, marriage, annulment, divorce, or death, provided it bears the signature and seal of the custodian of such record and there is no conflicting evidence in the file which would serve to create doubt as to the correctness of the record; or

(5) When a copy of the public or church record from one of the countries comprising the United Kingdom, namely: England, Scotland, Wales, or Northern Ireland, purports to establish birth, marriage, or death, provided it bears the signature or seal or stamp of the custodian of such record and there is no evidence which would serve to create doubt as to the correctness of the records; or

(6) When affidavits prepared in the Republic of the Philippines are certified by a Veterans Administration representative located in the Philippines having authority to administer oaths.

(c) Photocopies of original documents meeting the requirements of this section will be accepted.

[26 FR 1571, Feb. 24, 1961, as amended at 40 FR 36329, Aug. 20, 1975]

CROSS REFERENCE: State Department as agent of Veterans Administration. See § 3.108.

§ 3.203 Service records as evidence of service and character of discharge.

(a) *Evidence submitted by a claimant.* For the purpose of establishing entitlement to pension, compensation, dependency and indemnity compensation or burial benefits the Veterans Administration may accept evidence of service submitted by a claimant (or sent directly to the Veterans Administration by the service department), such as a DD Form 214, Certificate of Release or Discharge from Active Duty, or original Certificate of Discharge, without verification from the appropriate service department if the evidence meets the following conditions:

(1) The evidence is a document issued by the service department. A copy of an original document is acceptable if the copy was issued by the service department; and

(2) The document contains needed information as to length, time and character of service; and

(3) In the opinion of the Veterans Administration the document is genuine and the information contained in it is accurate.

(b) *Additional requirements for pension claimants.* In addition to meeting the requirements of paragraph (a) of this section, a document submitted to establish a creditable period of wartime service for pension entitlement may be accepted without verification if the document (or other evidence of record) shows:

(1) Service of 4 months or more; or

(2) Discharge for disability incurred in line of duty; or

(3) Ninety days creditable service based on records from the service department such as hospitalization for 90 days for a line of duty disability.

(c) *Verification from the service department.* When the claimant does not submit evidence of service or the evidence submitted does not meet the requirements of paragraph (a) of this section (and paragraph (b) of this section in pension claims), the Veterans Administration shall request verification of service from the service department. If it appears that a length of service requirement may not be met (e.g., the 90 days wartime service requirement to receive pension under 38 U.S.C. 521(j)), the Veterans Administration shall request a complete statement of service to determine if there are any periods of active service that are required to be excluded under § 3.15.

[45 FR 72654, Nov. 3, 1980]

§ 3.204 Evidence other than evidence of service.

(a) *Marriage or birth.* The classes of evidence to be requested for the purpose of establishing marriage, age, or relationship are indicated in §§ 3.205 and 3.209 in the order of preference. Failure to furnish the higher class, however, does not preclude the acceptance of a lower class if the evidence furnished is sufficient to prove the point involved.

(b) *Marriage, birth, or death.* A certified copy or abstract of a record referred to in §§ 3.205, 3.209, and 3.211, which is not certified over the signature and official seal of the person having custody of the record, will be accepted nevertheless if:

(1) The person having custody of the record has no official seal, and the copy or abstract bears his or her signature and is either sworn to by such person or is on a blank printed especially for that purpose; or

(2) The copy is made by a field examiner or other employee of the Veterans Administration who is authorized to administer oaths.

(c) *Photostats.* Photostats of original documents or of certified copies of records will be acceptable if the original would be acceptable.

[26 FR 1572, Feb. 24, 1961, as amended at 40 FR 53581, Nov. 19, 1975; 45 FR 72655, Nov. 3, 1980]

§ 3.205 Marriage.

(a) *Proof of marriage.* The certified statement of a veteran as to the material facts of his (or her) marriage, solemnized in accordance with the laws of the jurisdiction, each party not having been previously married, will be accepted for this purpose in the absence of information to the contrary. The certified statement of a person claiming as surviving spouse, as to the material facts of the claimant's marriage to the veteran, solemnized in accordance with the laws of the jurisdiction, each party not having been previously married, will be accepted for this purpose if corroborated in a material part by a statement made by the veteran in connection with a claim for benefits and if uncontradicted by other information. In all other instances the marriage should be established by one of the following types of evidence:

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or one authorized to act for such officer bearing the seal of such office, or otherwise properly identified, or a certified copy of the church record of marriage.

(2) Official report from service department as to marriage which occurred while the veteran was in service.

(3) The affidavit of the clergyman or magistrate who officiated.

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage.

(5) The affidavits or certified statements of two or more eyewitnesses to the ceremony.

(6) In jurisdictions where marriages other than by ceremony are recognized the affidavits or certified statements of one or both of the parties to the marriage, if living, setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the periods of cohabitation, places of residences, whether the parties held themselves out as husband and wife, and whether they were generally accepted as such in the communities in which they lived.

(7) Any other secondary evidence which reasonably supports a belief by the Adjudicating activity that a valid marriage actually occurred.

(b) *Valid marriage.* In the absence of conflicting information, proof of mar-

riage which meets the requirements of paragraph (a) of this section together with the claimant's certified statement concerning the date, place and circumstances of dissolution of any prior marriage may be accepted as establishing a valid marriage, provided that such facts, if they were to be corroborated by record evidence, would warrant acceptance of the marriage as valid. Where necessary to a determination because of conflicting information or protest by a party having an interest therein, proof of termination of a prior marriage will be shown by proof of death, or a certified copy or a certified abstract of final decree of divorce or annulment specifically reciting the effects of the decree.

(c) *Marriages deemed valid.* Where a widow or widower has submitted proof of marriage in accordance with paragraph (a) of this section and also meets the requirements of § 3.52, the claimant's signed statement that he or she had no knowledge of an impediment to the marriage to the veteran will be accepted, in the absence of information to the contrary, as proof of that fact.

[26 FR 1572, Feb. 24, 1961, as amended at 27 FR 6281, July 3, 1962; 36 FR 20946, Nov. 2, 1971; 40 FR 53581, Nov. 19, 1975; 45 FR 72655, Nov. 3, 1980]

CROSS REFERENCES: Marriages deemed valid. See § 3.52. Definitions; marriage. See § 3.1(j).

§ 3.206 Divorce.

The validity of a divorce decree regular on its face, will be questioned by the Veterans Administration only when such validity is put in issue by a party thereto or a person whose interest in a claim for Veterans Administration benefits would be affected thereby. In cases where recognition of the decree is thus brought into question:

(a) Where the issue is whether the veteran is single or married (dissolution of a subsisting marriage), there must be a bona fide domicile in addition to the standards of the granting jurisdiction respecting validity of divorce;

(b) Where the issue is the validity of marriage to a veteran following a divorce, the matter of recognition of the divorce by the Veterans Administration (including any question of bona fide domicile) will be determined according to the laws of the jurisdictions specified in § 3.1(j).

(c) Where a foreign divorce has been granted the residents of a State whose laws consider such decrees to be valid, it will thereafter be considered as valid under the laws of the jurisdictions specified in § 3.1(j) in the absence of a determination to the contrary by a court of last resort in those jurisdictions.

[27 FR 6281, July 3, 1962, as amended at 35 FR 16831, Oct. 31, 1970; 40 FR 53581, Nov. 19, 1975]

§ 3.207 Void or annulled marriage.

Proof that a marriage was void or has been annulled should consist of:

(a) *Void.* A certified statement from the claimant setting forth the circumstances which rendered the marriage void, together with such other evidence as may be required for a determination.

(b) *Annulled.* A certified copy, or certified abstract, of the decree of annulment. A decree regular on its face will be accepted unless there is reason to question the basic authority of the court to render annulment decrees or there is evidence indicating that the annulment may have been obtained through fraud by either party or by collusion.

[28 FR 2904, Mar. 3, 1963, as amended at 40 FR 53581, Nov. 19, 1975]

CROSS REFERENCE: Effective dates, void or annulled marriage. See § 3.400 (u) and (v).

§ 3.208 Claims based on attained age.

In claims for pension where the age of the veteran or widow or widower is material, the statements of age will be accepted where they are in agreement with other statements in the record as to age. However, where there is a variance in such records, the youngest age will be accepted subject to the submission of evidence as outlined in § 3.209.

[40 FR 53581, Nov. 19, 1975]

§ 3.209 Birth.

The certified statement of a veteran as to the material facts of birth of a child of his or her marriage will be ac-

cepted as proof of age and relationship in the absence of information to the contrary. The certified statement of the other parent as to the material facts of birth of a child of a deceased veteran will be accepted as proof of age and relationship if uncontradicted by other information and if corroboration as to the child's identity or existence is supplied by a statement or assertion made by the veteran in connection with a claim for benefits. In all other cases the issues will be resolved by one of the types of evidence listed in paragraphs (a) through (g) of this section. Where the evidence submitted in proof of age or relationship indicates a difference in the name of the person as shown by other records the discrepancy will be reconciled by an affidavit or certified statement identifying the person having the changed name as the person whose name appears in the evidence of age and relationship:

(a) A copy or abstract of the public record of birth, certified by the custodian of such records. Such a record established more than 4 years after the birth will be accepted as proof of age or relationship if, it is not inconsistent with material of record with the Veterans Administration, or if it shows on its face that it is based upon evidence which would be acceptable under this section.

(b) A copy of the church record of baptism, certified by the custodian of such records. Such a record of baptism performed more than 4 years after birth will not be accepted as proof of age or relationship unless it is consistent with material of record with the Veterans Administration, which will include at least one reference to age or relationship made at a time when such reference was not essential to establishing entitlement to the benefit claimed.

(c) Official report from the service department as to birth which occurred while the veteran was in service.

(d) Affidavit or a certified statement of the physician or midwife in attendance at birth.

(e) Copy of Bible or other family record certified to by a notary public or other officer with authority to administer oaths, who should state in what year the Bible or other book in which the record appears was printed, whether the record bears any erasures or other marks of alteration, and whether from the appearance of the writing he believes the entries to have been made at the time purported.

(f) Affidavits or certified statements of two or more persons, preferably disinterested, who will state their ages, showing the name, date, and place of birth of the person whose age or relationship is being established, and that to their own knowledge such person is the child of such parents (naming the parents) and stating the source of their knowledge.

(g) Other evidence which is adequate to establish the facts in issue, including census records, original baptismal records, hospital records, insurance policies, school, employment, immigration, or naturalization records.

[26 FR 1573, Feb. 24, 1961, as amended at 27 FR 1899, Feb. 28, 1962; 40 FR 53581, Nov. 19, 1975]

CROSS REFERENCE: Secondary evidence. See § 3.204.

§ 3.210 Child's relationship.

(a) *Legitimate child.* Where it is necessary to determine the legitimacy of a child, evidence will be required to establish the legality of the marriage of the mother of the child to the veteran or to show that the child is otherwise legitimate by State laws together with evidence of birth as outlined in § 3.209. Where the legitimacy of a child is not a factor, evidence to establish legitimacy will not be required: *Provided,* That, evidence is on file which meets the requirements of paragraph (b) of this section sufficient to warrant recognition of the relationship of the child without regard to legitimacy.

(b) *Illegitimate child.* As to the mother of an illegitimate child, proof of birth is all that is required. As to the father, the sufficiency of evidence will be determined in accordance with the facts in the individual case. Proof of such relationship will consist of:

(1) An acknowledgment in writing signed by him; or

(2) Evidence that he has been identified as the child's father by a judicial decree ordering him to contribute to

the child's support or for other purposes; or

(3) Any other secondary evidence which reasonably supports a finding of relationship, as determined by an official authorized to approve such findings, such as:

(i) A certified copy of the public record of birth or church record of baptism showing that the veteran was the informant and was named as father of the child; or

(ii) Statements of persons who know that the veteran accepted the child as his; or

(iii) Information obtained from service department or public records, such as school or welfare agencies, which shows that with his knowledge the veteran was named as the father of the child.

(c) *Adopted child.* Except as provided in paragraph (c)(1) of this section evidence of relationship will include a certified copy of the decree of adoption or a copy of the adoptive placement agreement and such other evidence as may be necessary.

(1) In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, the following may be accepted to establish the fact of adoption:

(i) As to a child adopted into the veteran's family, a certified copy of the child's revised birth certificate.

(ii) As to a child adopted out of the veteran's family, a statement over the signature of the judge or the clerk of the court setting forth the child's former name and the date of adoption, or a certified statement by the veteran, his widow, apportionee, or their fiduciaries setting forth the child's former name, date of birth, and the date and fact of adoption together with evidence indicating that the child's original public record of birth has been removed from such records. Where application is made for an apportionment under § 3.458(d) on behalf of a child adopted out of the veteran's family, the evidence must be sufficient to establish the veteran as the natural parent of the child.

(2) As to a child adopted by the veteran's spouse after his death, the statement of the adoptive mother or custodian of the child will be accepted in the absence of information to the contrary, to show that the child was a member of the veteran's household at the date of his death and that recurring contributions were not being received for the child's maintenance sufficient to provide for the major portion of the child's support, from any person other than the veteran or his spouse or from any public or private welfare organization which furnished services or assistance to children. (38 U.S.C. 101)

(d) *Stepchild.* Evidence of relationship of a stepchild will consist of proof of birth as outlined in § 3.209, evidence of the marriage of the veteran to the natural parent of the child, and evidence that the child is a member of the veteran's household or was a member of the veteran's household at the date of the veteran's death.

[26 FR 1573, Feb. 24, 1961, as amended at 27 FR 1899, Feb. 28, 1962; 28 FR 2959, Mar. 26, 1963; 38 FR 871, Jan. 5, 1973]

§ 3.211 Death.

Death should be established by one of the following types of evidence:

(a)(1) A copy of the public record of the State or community where death occurred certified by the custodian of such records.

(2) A certified copy of a coroner's report of death or a verdict of a coroner's jury of the State or community where death occurred, provided such report or verdict properly identified the deceased.

(b) Where death occurs in a hospital or institution under the control of the United States Government:

(1) A death certificate signed by a medical officer; or

(2) A clinical summary or other report showing fact and date of death signed by a medical officer.

(c) An official report of death of a member of a uniformed service from the Secretary of the department concerned where death occurs while deceased was on the retired list, in an inactive duty status, or in the active service.

(d) Where death occurs abroad:

(1) A United States consular report of death bearing the signature and seal of the United States consul; or

(2) A certified copy of the public record of death authenticated (see § 3.202(b)(4) for exception) by the United States consul or other agency of the State Department; or

(3) An official report of death from the head of the department concerned, where the deceased person was, at the time of death, a civilian employee of such department.

(e) If the foregoing evidence cannot be furnished, the reason must be stated. The fact of death may then be established by the affidavits of persons who have personal knowledge of the fact of death, have viewed the body of the deceased, know it to be the body of the person whose death is being established, setting forth all the facts and circumstances concerning the death, place, date, time, and cause thereof.

(f) If proof of death, as defined in paragraphs (a) through (e) of this section cannot be furnished, a finding of fact of death, where death is otherwise shown by competent evidence, may be made by an official authorized to approve such findings. Where it is indicated that the veteran died under circumstances which precluded recovery or identification of the body, the fact of death should be established by the best evidence, which from the nature of the case must be supposed to exist.

(g) In the absence of evidence to the contrary, a finding of fact of death made by another Federal agency will be accepted for the purposes of paragraph (f) of this section.

[26 FR 1573, Feb. 24, 1961, as amended at 27 FR 1899, Feb. 28, 1962]

§ 3.212 Unexplained absence for 7 years.

(a) If satisfactory evidence is produced establishing the fact of the continued and unexplained absence of any individual from his home and family for a period of 7 years or more and that a diligent search disclosed no evidence of his existence after the date of disappearance, and if evidence as provided in § 3.211 cannot be furnished, the death of such individual as of the expiration of such period may be considered as sufficiently proved.

(b) No State law providing for presumption of death will be applicable to claims for benefits under laws administered by the Veterans Administration and the finding of death will be final and conclusive except where suit is filed for insurance under 38 U.S.C. 784. (38 U.S.C. 108)

(c) In the absence of evidence to the contrary, a finding of death made by another Federal agency will be accepted if the finding meets the requirements of paragraph (a) of this section.

[26 FR 1573, Feb. 24, 1961, as amended at 27 FR 1899, Feb. 28, 1962]

§ 3.213 Change of status affecting entitlement.

(a) *General.* Proof will be required to establish a change of status which would result in payment of a higher rate of pension, compensation or dependency and indemnity compensation. For the purpose of reducing or discontinuing such benefits, a statement by a claimant or payee setting forth the month and year of change of status which would result in a reduction or discontinuance of benefits to that person will be accepted, in the absence of contradictory information. This includes:

(1) *Veteran.* A statement by the veteran setting forth the month and year of death of a wife, child, or dependent parent.

(2) *Widow.* A statement by the widow or remarried widow setting forth the month and year of remarriage and her present name. (An award for a child or children who are otherwise entitled may be made to commence the day following the date of discontinuance of payments to the widow.)

(3) *Child.* A statement by the veteran or widow (where an additional allowance is being paid to the veteran or widow for a child), or fiduciary, setting forth the month and year of the child's death, marriage, or discontinuance of school attendance. A similar statement by a child who is receiving payments direct will be accepted to establish his marriage or the discontinuance of school attendance. Where ap-

propriate, the month and year of discontinuance of school attendance will be required in addition to the month and year of death or marriage of a child.

(4) *Parent.* A statement by a parent setting forth the month and year:

(i) Of marriage or remarriage;

(ii) When two parents or a parent and spouse ceased living together;

(iii) When two parents or a parent and spouse resumed living together following a period of separation;

(iv) Of divorce or death of a spouse.

(b) *Date not reported.* If the month and year of the event is not reported, the award will be reduced or discontinued, whichever is appropriate, effective date of last payment. The payee will be requested to furnish within 60 days from the date of request a statement setting forth the date of the event. Where payments are continued at a reduced rate, the award will be discontinued effective date of last payment if the required statement is not received within the 60-day period. Payments on a discontinued award may be resumed, if otherwise in order, from the date of discontinuance if the necessary information is received within 1 year from the date of request; otherwise from the date of receipt of a new claim.

(c) *Contradictory information.* Where there is reason to believe that the event reported may have occurred at an earlier date, formal proof will be required.

[26 FR 1574, Feb. 24, 1961, as amended at 27 FR 1899, Feb. 28, 1962; 27 FR 11888, Dec. 1, 1962]

CROSS REFERENCES: Abandoned claims. See § 3.158.

Change in status of dependents. See § 3.651.

Material change in income, net worth or change in status. See § 3.660.

§ 3.214 Court decisions; unremarried widows.

Effective July 15, 1958, a decision rendered by a Federal court in an action to which the United States was a party holding that a widow of a veteran has not remarried will be followed in determining eligibility for pension, compensation or dependency and indemnity compensation.

[31 FR 2782, Feb. 16, 1966]

CROSS REFERENCES: Abandoned claims. See § 3.158.

Change in status of dependents. See § 3.651.

Dependency, income and estate. See § 3.660.

§ 3.215 Termination of marital relationship or conduct.

On and after January 1, 1971, benefits may be resumed to an unmarried widow upon filing of an application and submission of satisfactory evidence that she has ceased living with another man and holding herself out openly to the public as his wife, or that she has terminated a relationship or conduct which had created an inference or presumption of remarriage or related to open and notorious adulterous cohabitation or similar conduct. Such evidence may consist of, but is not limited to, her certified statement of the fact. (38 U.S.C. 103(d); sec. 5, Public Law 91-376, 84 Stat. 787)

[35 FR 18281, Dec. 1, 1970]

DEPENDENCY, INCOME AND ESTATE

REGULATIONS APPLICABLE TO PROGRAMS IN EFFECT PRIOR TO JANUARY 1, 1979

§ 3.250 Dependency of parents; compensation.

(a) *Income*—(1) *Conclusive dependency.* Dependency of a parent (other than one who is residing in a foreign country) will be held to exist where the monthly income does not exceed:

(i) $205 for a mother or father not living together;

(ii) $340 for a mother and father, or remarried parent and spouse, living together;

(iii) $95 for each additional "member of the family" as defined in paragraph (b)(2) of this section (38 U.S.C. 102(a)(2)).

(2) *Excess income.* Where the income exceeds the monthly amounts stated in paragraph (a)(1) of this section dependency will be determined on the facts in the individual case under the principles outlined in paragraph (b) of this section. In such cases, dependency will not be held to exist if it is reasonable that some part of the

corpus of the claimant's estate be consumed for his or her maintenance.

(3) *Foreign residents.* There is no conclusive presumption of dependency. Dependency will be determined on the facts in the individual case under the principles outlined in this section.

(b) *Basic rule.* Dependency will be held to exist if the father or mother of the veteran does not have an income sufficient to provide reasonable maintenance for such father or mother and members of his or her family under legal age and for dependent adult members of the family if the dependency of such adult member results from mental or physical incapacity.

(1) "Reasonable Maintenance" includes not only housing, food, clothing, and medical care sufficient to sustain life, but such items beyond the bare necessities as well as other requirements reasonably necessary to provide those conveniences and comforts of living suitable to and consistent with the parents' reasonable mode of life.

(2) "Member of the family" means a person (other than spouse) including a relative in the ascending as well as descending class, whom the father or mother is under moral or legal obligation to support. In determining whether other members of the family under legal age are factors in necessary expenses of the mother or father, consideration will be given to any income from business or property (including trusts) actually available, directly or indirectly, to the mother or father for the support of the minor but not to the corpus of the estate or the income of the minor which is not so available.

(c) *Inception of dependency.* The fact that the veteran has made habitual contributions to the father or mother, or both, is not conclusive evidence that dependency existed but will be considered in connection with all other evidence. In death claims, it is not material whether dependency arose prior or subsequent to the veteran's death (38 U.S.C. 102(a)). (See § 3.1000(d)(3) as to accrued.)

(d) *Remarriage.* Dependency will not be denied solely because of remarriage (38 U.S.C. 102(a)(2)). Compensation may be continued if the parent submits evidence to show that dependency exists, considering the combined income and expenses of the parent and spouse.

[28 FR 29, Jan. 1, 1963, as amended at 40 FR 16065, Apr. 9, 1975; 40 FR 36329, Aug. 20, 1975]

§ 3.251 Income of parents; dependency and indemnity compensation.

(a) *Annual income limitations and rates.* (1) Dependency and indemnity compensation is not payable to a parent or parents whose annual income exceeds the limitations set forth in 38 U.S.C. 415 (b), (c), or (d).

(2) Where there is only one parent, and the parent has remarried and is living with his or her spouse, dependency and indemnity compensation will be paid under either the formula in 38 U.S.C. 415(b)(1) or the formula in 38 U.S.C. 415(d), whichever will provide the greater monthly rate of dependency and indemnity compensation. The total combined annual income of the parent and spouse will be counted. (38 U.S.C. 415)

(3) Where the claim is based on service in the Commonwealth Army of the Philippines, or as a guerrilla or as a Philippine Scout under section 14, Public Law 190, 79th Congress, the income limitation will be computed at a rate in Philippine pesos equivalent of $0.50 for each dollar. See § 3.100(b). (38 U.S.C. 107)

(4) If the remarriage of a parent has been terminated, or the parent is separated from his or her spouse, the rate of dependency and indemnity compensation for the parent will be that which would be payable if there were one parent alone or two parents not living together, whichever is applicable.

(5) Where there are two parents living and only one parent has filed claim, the rate of dependency and indemnity compensation will be that which would be payable if both parents had filed claim.

(b) *Basic rule.* Payments of any kind or from any source will be counted as income unless specifically excluded. Income will be counted for the calendar year in which it is received and total income for the full calendar year

will be considered except as provided in § 3.260.

[28 FR 29, Jan. 1, 1963, as amended at 31 FR 14455, Nov. 10, 1966; 40 FR 16065, Apr. 9, 1975; 41 FR 15411, Apr. 13, 1976]

§ 3.252 Annual income; pension; Mexican border period and later war periods.

(a) *Annual income limitations; old-law pension.* Where the right to old-law pension is payable under section 306(b) of Pub. L. 95-588 (92 Stat. 2497), pension is not payable if the pensioner's annual income exceeds the income limitations prescribed by § 3.26(b).

(b) *Annual income and net worth limitations; Pub. L. 86-211.* Pension is not payable to a veteran, widow or widower or child whose annual income exceeds the limitations set forth in 38 U.S.C. 521, 541 or 542; or to a veteran, widow or widower or child if it is reasonable that some part of the claimant's estate be consumed for his or her maintenance. Where a veteran and spouse are living together, the separate income of the spouse will be considered as the veteran's income as provided in § 3.262(b). (38 U.S.C. 543)

(c) *Basic rule.* Payments of any kind or from any source will be counted as income unless specifically excluded. Income will be counted for the calendar year in which it is received and total income for the full calendar year will be considered except as provided in § 3.260.

(d) *Veteran with a spouse.* For the purpose of determining eligibility under paragraph (b) of this section the pension rates provided by 38 U.S.C. 521(c) may be authorized for a married veteran if he or she is living with or, if estranged, is reasonably contributing to the support of his or her spouse. The determination of "reasonable" contribution will be based on all the circumstances in the case, considering the income and estate of the veteran and the separate income and estate of the spouse. Apportionment of the veteran's pension under § 3.451 meets the requirement of reasonable contribution.

(e) *Widow or widower with a child—*(1) *Child.* The term "child" means a child as defined in § 3.57. Where a posthumous child is involved, the widow will not be considered a widow with a child prior to the date of birth of the child.

(2) *Veteran's child not in widow's or widower's custody.* Where the veteran was survived by a widow or widower and by a child, the income increments for a widow or widower and child are applicable even though the child is not the child of the widow or widower and not in his or her custody.

(3) *Income of child.* The separate income received by a child or children, regardless of custody, will not be considered in computing the widow's or widower's income. Where the separate income of the child is turned over to the widow or widower, only so much of the money as is left after deducting any expenses for maintenance of the child will be considered the widow's or widower's income.

(4) *Alternative rate.* Whenever the monthly pension rate payable to the widow or widower under the formula in 38 U.S.C. 541(c) is less than the rate payable for one child under section 542 if the widow or widower were not entitled, the widow or widower will be paid the child's rate.

(f) *Income over maximum; reduced aid and attendance allowance.* Beginning January 1, 1977, veterans in need of regular aid and attendance who are not receiving pension because their income exceeds the applicable statutory limitation may be eligible for a reduced aid and attendance allowance. The amount payable is the regular aid and attendance allowance authorized by 38 U.S.C. 521(d)(1) reduced by 16.6 percent for each $100, or portion thereof, by which the veteran's annual income exceeds the applicable maximum income limitation. The reduced aid and attendance allowance is payable when:

(1) A veteran in need of regular aid and attendance is denied pension under 38 U.S.C. 521 solely because the veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 521 (b)(3) and (c)(3); or

(2) Pension payable under 38 U.S.C. 521 to a veteran in need of regular aid and attendance is discontinued solely because the veteran's annual income exceeds the applicable maximum

income limitation in 38 U.S.C. 521 (b)(3) or (c)(3); and

(3) The veteran's annual income exceeds the applicable maximum income limitation in 38 U.S.C. 521 (b)(3) or (c)(3) by an amount not greater than the amount specified in 38 U.S.C. 521 (d)(2).

[28 FR 30, Jan. 1, 1963, as amended at 40 FR 16065, Apr. 9, 1975; 41 FR 15411, Apr. 13, 1976; 41 FR 56803, Dec. 30, 1976; 44 FR 45935, Aug. 6, 1979]

CROSS REFERENCES: Basic pension determinations. See § 3.314.

Determination of permanent need for regular aid and attendance and "permanently bedridden". See § 3.352.

§§ 3.253—3.255 [Reserved]

§ 3.256 Annual income and net worth questionnaires.

A questionnaire will be sent once each calendar year to each payee who is receiving pension or dependency and indemnity compensation whose entitlement is subject to an annual income (and net worth where applicable) limitation, except a child and, effective January 1, 1972, except a payee who has attained 72 years of age and has been paid the particular benefit during 2 consecutive calendar years, (38 U.S.C. 415(e) and 506(a); Pub. L. 91-588, 84 Stat. 1580)

[36 FR 8445, May 6, 1971]

§ 3.257 Children; no widow or widower entitled.

Where pension is not payable to a widow or widower because his or her annual income exceeds the statutory limitation or because of his or her net worth, payments will be made to or for the child or children as if there were no widow or widower.

[40 FR 16066, Apr. 9, 1975]

§§ 3.258—3.259 [Reserved]

§ 3.260 Computation of income.

For entitlement to pension or dependency and indemnity compensation, income will be counted for the calendar year in which it is received.

(a) *Installments.* Income will be determined by the total amount received or anticipated during the calendar year.

(b) *Deferred determinations.* Where there is doubt as to the amount of the anticipated income, pension or dependency and indemnity compensation will be allowed at the lowest appropriate rate or will be withheld, as may be in order, until the end of the calendar year when the total income received during the year may be determined.

(c) *Proportionate income limitations; excess income.* A proportionate income limitation will be established under the conditions set forth in paragraph (d) of this section except where application of a proportionate income limitation would result in payment of a lower rate than would be payable on the basis of income for the full calendar year.

(d) *Proportionate income limitations; computation.* Income limitations will be computed proportionately for the purpose of determining initial entitlement, or for resuming payments on an award which was discontinued for a reason other than excess income or a change in marital or dependency status. A proportionate income limitation will be established for the period from the date of entitlement to the end of that calendar year. The total amount of income received by the claimant during that period will govern the payment of benefits. Income received prior to the date of entitlement will be disregarded.

(e) *Proportionate income limitations; spouse.* In determining whether proportionate computation is applicable to a claim under Pub. L. 86-211 (73 Stat. 432), the total income for the calendar year of entitlement of both veteran and that of the spouse available for use of the veteran will be considered. If a proportionate income limitation is then applicable, it will be applied to both the veteran's and the spouse's income. The spouse's income will not be included, however, where his or her total income for the calendar year does not exceed $1,200.

(f) *Rate changes.* In years after that for which entitlement to pension or dependency and indemnity compensation has been established or reestablished as provided in paragraph (d) of this section, total income for the cal-

endar year will govern the payment of benefits. Where there is a change in the conditions of entitlement because of a change in marital or dependency status, entitlement for each period will be determined separately. For the period when the claimant was married or had a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is married or has a dependent. For the period when the claimant was unmarried or without a dependent, the rate payable will be determined under the annual income limitation or increment applicable to a claimant who is not married or has no dependent. Since these determinations will be based on total income for the calendar year, it is not material whether such income was received before or after the change of status.

(g) *Fractions of dollars.* In computing a claimant's annual income a fraction of a dollar will be disregarded for the purpose of determining entitlement to monthly payments of pension and dependency and indemnity compensation. (38 U.S.C. 415(g)(2); 503(b); Pub. L. 92-197, 85 Stat. 660; Pub. L. 92-198, 85 Stat. 663)

[28 FR 30, Jan. 1, 1963, as amended at 29 FR 2944, Mar. 4, 1964; 37 FR 6677, Apr. 1, 1972; 40 FR 16066, Apr. 9, 1975]

§ 3.261 Character of income; exclusions and estates.

The following factors will be considered in determining whether a claimant meets the requirements of §§ 3.250, 3.251 and 3.252 with reference to dependency, income limitations and corpus of estate:

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; protected (veterans, widows and children)	Pension; Pub. L. 86-211 (veterans, widows and children)	See—
(1) Total income from employment, business, investments, or rents.	Included	Included	Included	Included	§ 3.262(a).
(2) Income of spouse	do	do	Excluded	do	§ 3.262(b).
(3) Earnings of members of family under legal age.	do	Excluded	do	Excluded	§ 3.250(b)(2). § 3.252(e)(3).
(4) Earned income of child-claimant			Included	do	
(5) Gifts, including contributions from adult members of family:					
Property	do	Included	do	do	§ 3.262(k).
Money	do	do	do	Included	
(6) Value of maintenance by relative, friend, or organization.	Excluded	Excluded	Excluded	Excluded	§ 3.262(c).
(7) Rental value of property owned by and resided in by claimant.	do	do	do	do	
(8) Charitable donations	do	do	Included	do	§ 3.262(d).
(9) Family allowance authorized by service personnel.	Included	Included	do	Included	
(10) Reasonable value of allowances to person in service in addition to base pay.	do	do	do	Included except as earned income of child-claimant.	
(11) Mustering-out pay	Excluded	do	Excluded	do	
(12) Six-months' death gratuity	do	Excluded	do	Excluded	
(13) Bonus or similar cash gratuity paid by any State based on service in Armed Forces of United States.	Excluded	Excluded	Excluded	Excluded	
(14) Retired Serviceman's Family Protection Plan; Survivor Benefit Plan (10 U.S.C. ch. 73):					
Retired Serviceman's Family Protection Plan (Subch. I):					
Annuities	do	do	do	do	
Refund (10 U.S.C. 1446)	Included	Included	Included	Included	
Survivor Benefit Plan (Subch. II) (Public Law 92-425; 86 Stat. 706).	do	do	do	do	§ 3.262(e).

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Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; protected (veterans, widows and children)	Pension; Pub. L. 86-211 (veterans, widows and children)	See—
(15) Retirement pay received direct from service department.	Included	Included	Included	Included	§ 3.262(e).
(16) Retirement benefits; general	do	do	do	do	§ 3.262(h).
(17) Social security benefits:	do	do	do	do	§ 3.262(e).
Old age and survivors', and disability insurance.	Included	Included	Included	Included	§ 3.262(f).
Charitable programs	Excluded	Excluded	do	Excluded	
Lump-sum death payments	Included	do	do	do	
Supplemental security income	Excluded	Excluded	do	do	
(18) Railroad Retirement benefits	do	Included	Disability pension—Excluded Death pension—Included.	Included	§ 3.262(g).
(19) Retirement pay waived under Federal statute.	Excluded	Excluded	Excluded	do	§ 3.262(h).
(20) Veterans' Administration payments:					
Pension	Excluded	Excluded	Excluded	Excluded	
Compensation and dependency and indemnity compensation.	do	do	do	do	
World War I adjusted compensation	do	Included	do	Included	
U.S. Government life insurance or national service life insurance for disability or death, maturity of endowment policies, and dividends, including special and termination dividends.	Excluded	Excluded	Excluded	Excluded	
Servicemen's group life insurance	do	do	do	do	
Veterans' group life insurance	do	do	do	do	
Servicemen's indemnity	do	do	do	do	
Subsistence allowance (38 U.S.C. ch. 31).	Included	Included	Included	Included	
Veterans educational assistance in excess of amounts expended for training (38 U.S.C. ch. 34).	do	do	do	do	
Educational assistance (38 U.S.C. ch. 35).			Excluded	Excluded	
Special allowance under 38 U.S.C. 412(a).	Excluded	Included	do	Included	
Statutory burial allowance	do	Excluded	do	Excluded	
Accrued	do	Included, except accrued as reimbursement.	do	Included, except accrued as reimbursement.	
(21) Compensation (civilian) for injury or death.	Included	Included	Included	Included	§ 3.262(i).
(22) Contributions by a public or private employer to a:					
Public or private health or hospitalization plan for an active or retired employee.	Excluded	Excluded	Excluded	Excluded	
Retired employee as reimbursement for premiums for supplementary medical insurance benefits under the Social Security Program (Public Law 91-588; 84 Stat. 1580).	Included	Included	Excluded	Excluded	
(23) Overtime pay; Government employees.	Included	Included	Disability pension—Excluded. Death pension—Included.	Included	
(24) Commercial life insurance; disability, accident, or health insurance, less payments of medical or hospital expenses resulting from the accident or disease for which payments are made.	Included (as received).	Included (as received).	Included (special provision).	Included (as received).	§ 3.262(j).

Income	Dependency (parents)	Dependency and indemnity compensation (parents)	Pension; protected (veterans, widows and children)	Pension; Pub. L. 86-211 (veterans, widows and children)	See—
(25) Commercial annuities or endowments.	do	Included (special provision).	do	Included (special provision).	§ 3.262(j).
(26) Dividends from commercial insurance.	Excluded	Excluded	Excluded	Excluded	
(27) Insurance under Merchant Marine Act of 1936, as amended.	Included	Included	Included	Included	
(28) Fire insurance	Excluded	Excluded	Excluded	Excluded	
(29) Bequests, devises and inheritances:					
Property	Included	Excluded	Included	do	§ 3.262(k).
Money	do	Included	do	Included	
Joint bank accounts	do	do	do	Excluded	§ 3.262(k)(1).
(30) Profit from sale of property	Excluded	Excluded	Excluded	Excluded	§ 3.262(k).
(31) Jury duty or obligatory civic duties	do	do	do	do	
(32) Relocation payments (Public Law 90-448; Public Law 90-495).	do	do	do	do	§ 3.262(c).
(33) The following programs administered by the ACTION Agency:					
Foster Grandparent Program and Older Americans Community Service Programs payments (Public Law 93-29; 87 Stat. 55).	Excluded	Excluded	Excluded	Excluded	§ 3.262(q)(1).
Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (PLS), ACTION Cooperative Volunteers (ACV), Foster Grandparent Program (FGP), and Older American Community Service Programs, Retired Senior Volunteer Program (RSVP), Senior Companion Program (Public Law 93-113; 87 Stat. 394).	do	do	do	do	§ 3.262(q)(2).
(34) The Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) administered by the Small Business Administration. (Pub. L. 93-113; 87 Stat. 394).	do	do	do	do	§ 3.262(q)(2).

[28 FR 31, Jan. 1, 1963, as amended at 29 FR 15205, Nov. 11, 1964; 31 FR 15632, Dec. 13, 1966; 33 FR 15286, Oct. 15, 1968; 36 FR 8446, May 6, 1971; 37 FR 6677, Apr. 1, 1972; 37 FR 7092, Apr. 8, 1972; 37 FR 21436, Oct. 11, 1972; 38 FR 872, Jan. 5, 1973; 38 FR 26804, Sept. 26, 1973; 38 FR 28826, Oct. 17, 1973; 40 FR 13305, Mar. 26, 1975; 40 FR 57459, Dec. 10, 1975; 41 FR 17386, Apr. 26, 1976; 42 FR 43834, Aug. 31, 1977]

§ 3.262 Evaluation of income.

(a) *Total income.* All income from sources such as wages, salaries, earnings, bonuses from employers, income from a business or profession or from investments or rents as well as the fair value of personal services, goods or room and board received in lieu thereof will be included.

(1) Salary is not determined by "takehome" pay, but includes deductions made under a retirement act or plan and amounts withheld by virtue of income tax laws.

(2) The gross income from a business or profession may be reduced by the necessary operating expenses, such as cost of goods sold, or expenditures for rent, taxes, and upkeep. Depreciation is not a deductible expense. The cost of repairs or replacement may be deducted. The value of an increase in stock inventory of a business is not considered income.

(3) A loss sustained in operating a business, profession, or farm or from investments may not be deducted from income derived from any other source.

(b) *Income of spouse.* Income of the spouse will be determined under the rules applicable to income of the claimant.

(1) *Parents.* Where the mother and father, or remarried parent and spouse

are living together, the total combined income will be considered in determining dependency, or in determining the rate of dependency and indemnity compensation payable to the parent. This rule is equally applicable where both parents have remarried and each is living with his or her spouse. If the remarriage of a parent has been terminated, or the parent is separated from his or her spouse, income of the spouse will be excluded.

(2) *Veterans.* The separate income of the spouse of a disabled veteran who is entitled to pension under laws in effect on June 30, 1960, will not be considered. Where pension is payable under section 306(a) of Pub. L. 95-588, to a veteran who is living with a spouse there will be included as income of the veteran all income of the spouse in excess of whichever is the greater, $1,797 ($1,616 after May 31, 1980 and prior to June 1, 1981) or the total earned income of the spouse, which is reasonably available to or for the veteran, unless hardship to the veteran would result. The presumption that inclusion of such income is available to the veteran and would not work a hardship on him or her may be rebutted by evidence of unavailability or of expenses beyond the usual family requirements. (38 U.S.C. 521(f); sec. 306(a)(2)(B) of Pub. L. 95-588 (92 Stat. 2497)).

(c) *Maintenance.* The value of maintenance furnished by a relative, friend, or a charitable organization (civic or governmental) will not be considered income. Where the claimant is maintained in a rest home or other community institution or facility, public or private, because of impaired health or advanced age, money paid to the home or to the claimant to cover the cost of maintenance will not be considered income, regardless of whether it is furnished by a relative, friend or charitable organization. The expense of maintenance is not deductible if it is paid from the claimant's income, except as provided in paragraph (l) of this section in claims for dependency and indemnity compensation.

(d) *Charitable donations.* Charitable donations from public or private relief or welfare organizations will not be considered income except in claims for pension under laws in effect on June 30, 1960. In the latter cases, additional charitable allowances received by a claimant for members of his or her family may not be divided per capita in determining the amount of the claimant's income.

(e) *Retirement benefits; general.* Retirement benefits, including an annuity or endowment, paid under a Federal, State, municipal, or private business or industrial plan are considered income as limited by this paragraph. Where the payments received consist of part principal and part interest, interest will not be counted separately.

(1) *Protected pension.* Except as provided in this paragraph (e)(1), effective January 1, 1965, in determining income for pension purposes under laws in effect on June 30, 1960, 10 percent of the retirement payments received by a veteran, surviving spouse, or child will be excluded. The remaining 90 percent will be considered income as received. Where the retirement benefit is based on the claimant's own employment, payments will not be considered income until the amount of the claimant's personal contribution (as distinguished from amounts contributed by the employer) has been received. Thereafter the 10 percent exclusion will apply.

(2) *Pension; Public Law 86-211.* Except as provided in this subparagraph, effective January 1, 1965, in determining income for pension purposes, under Pub. L. 86-211 (73 Stat. 432), 10 percent of the retirement payments received by a veteran, the veteran's spouse, surviving spouse, or child will be excluded. The remaining 90 percent will be considered income as received. Where a person was receiving or entitled to receive pension and retirement benefits based on his or her own employment on December 31, 1964, the retirement payments will not be considered income until the amount of the claimant personal contribution (as distinguished from amounts contributed by the employer) has been received. Thereafter the 10 percent exclusion will apply.

(3) *Compensation.* In determining dependency of a parent for compensation purposes, all payments will be considered income as received.

(4) *Dependency and indemnity compensation.* Except as provided in this subparagraph, effective January 1, 1967, in determining income for dependency and indemnity compensation purposes, 10 percent of the retirement payments received by a deceased veteran's parent or by the parent's spouse will be excluded. The remaining 90 percent will be considered income as received. Where a parent was receiving or entitled to receive dependency and indemnity compensation and retirement benefits based on his or her own employment on December 31, 1966, the retirement payments will not be considered income until the amount of the claimant's personal contribution (as distinguished from amounts contributed by the employer) has been received. Thereafter the 10 percent exclusion will apply. (38 U.S.C. 415(g), 503(a)(6); sec. 7(b), Pub. L. 89-730)

(f) *Social security benefits.* Old age and survivor's insurance and disability insurance under title II of the Social Security Act will be considered income as a retirement benefit under the rules contained in paragraph (e) of this section. Benefits received under noncontributory programs, such as old age assistance, aid to dependent children, and supplemental security income are subject to the rules contained in paragraph (d) of this section applicable to charitable donations. The lumpsum death payment under title II of the Social Security Act will be considered as income except in claims for dependency and indemnity compensation and for pension under Pub. L. 86-211 (73 Stat. 432).

(g) *Railroad retirement benefits*—(1) *Parents, surviving spouses and children.* Retirement benefits received from the Railroad Retirement Board will be considered as income under the rules contained in paragraph (e) of this section. (See paragraph (h) of this section as to waivers.)

(2) *Veterans.* Effective July 1, 1959, retirement benefits received from the Railroad Retirement Board were excluded from consideration as income in determining eligibility for disability pension. (45 U.S.C. 228s-1) This exclusion continues to be applicable to claims under laws in effect on June 30, 1960. Where eligibility to pension is subject to determination under Pub. L. 86-211 (73 Stat. 432), such retirement benefits will be considered as income under the rules contained in paragraph (e) of this section.

(h) *Retirement benefits waived.* Except as provided in this paragraph, retirement benefits (pension or retirement payments) which have been waived will be included as income. For the purpose of determining dependency of a parent, or eligibility of a parent for dependency and indemnity compensation or eligibility of a veteran, widow, or child for pension under laws in effect on June 30, 1960, retirement benefits from the following sources which have been waived pursuant to Federal statute will not be considered as income:

(1) Civil Service Retirement and Disability Fund;

(2) Railroad Retirement Board (see paragraph (g)(2) of this section);

(3) District of Columbia, firemen, policemen, or public school teachers;

(4) Former lighthouse service.

(i) *Compensation (civilian) for injury or death.* (1) Compensation paid by the Bureau of Employees' Compensation, Department of Labor (of the United States), or by Social Security Administration, or by Railroad Retirement Board, or pursuant to any workmen's compensation or employer's liability statute, or damages collected because of personal injury or death, less medical, legal, or other expenses incident to the injury or death, or the collection or recovery of such moneys will be considered income as received, except as provided in paragraph (i)(2) of this section. The criteria of paragraph (i)(1) of this section are for application as to all medical expenditures after such award or settlement. (Pub. L. 92-198, 85 Stat. 663).

(2) For pension, effective October 7, 1966, and for dependency and indemnity compensation effective January 1, 1967 if payments based on permanent and total disability or death are received from the Bureau of Employees' Compensation, Social Security Administration or Railroad Retirement Board, or pursuant to any workmen's compensation or employer's liability statute, there will be excluded 10 percent of the payments received after

deduction of medical, legal, and other expenses as authorized by paragraph (i)(1) of this section. The 10 percent exclusion does not apply to damages collected incident to a tort suit under other than an employer's liability law of the United States or a political subdivision of the United States, or to determinations of dependency for compensation purposes.

(j) *Commercial insurance*—(1) *Annuity or endowment insurance.* For pension, effective January 1, 1965, or for dependency and indemnity compensation, effective January 1, 1967, the provisions of paragraph (e) of this section apply. In such cases, 10 percent of the payments received will be excluded. In dependency and indemnity compensation claims, where the parent is receiving or entitled to receive dependency and indemnity compensation on December 31, 1966, and is also receiving or entitled to receive annuity payments on that date, or endowment insurance matures on or before that date, no part of the payments received will be considered income until the full amount of the consideration has been received, after which 10 percent of the amount received will be excluded. For compensation, the full amount of each payment is considered income as received.

(2) *Life insurance; general.* In determining dependency, or eligibility for dependency and indemnity compensation, or for pension under Pub. L. 86-211 (73 Stat. 432), the full amount of payments is considered income as received. For pension under Pub. L. 86-211, effective October 7, 1966, and for dependency and indemnity compensation, effective January 1, 1967, 10 percent of the payments received will be excluded.

(3) *Life insurance; protected pension.* For pension under laws in effect on June 30, 1960, 10 percent of the payments received will be excluded. Where it is considered that life insurance was received in a lump sum in the calendar year in which the veteran died and payments are actually received in succeeding years, no part of the payments received in succeeding years will be considered income until an amount equal to the lump-sum face value of the policy has been received, after which 10 percent of the payments received will be excluded. The 10 percent exclusion is authorized effective October 7, 1966.

(4) *Disability, accident or health insurance.* For pension, effective October 7, 1966, and for dependency and indemnity compensation, effective January 1, 1967, there will be excluded 10 percent of the payments received for disability after deduction of medical, legal, or other expenses incident to the disability. For compensation, after deduction of such expenses, the full amount of payments is considered income as received.

(k) *Property*—(1) *Ownership.* The terms of the recorded deed or other evidence of title will constitute evidence of ownership of real or personal property. This includes property acquired through purchase, bequest or inheritance except that, effective January 1, 1971, amounts in joint accounts in banks and similar institutions acquired by reason of the death of another joint owner shall not be considered income of a survivor for pension purposes under the provisions of Pub. L. 86-211 (73 Stat. 432). With the foregoing exception, if property is owned jointly each person will be considered as owning a proportionate share. The claimant's share of property held in partnership will be determined on the facts found. In the absence of evidence to the contrary, the claimant's statement as to the terms of ownership will be accepted. (38 U.S.C. 503(15); Pub. L. 91-588, 84 Stat. 1580).

(2) *Income-producing property.* Income received from real or personal property owned by the claimant will be counted. The claimant's share will be determined in proportion to his right according to the rules of ownership.

(3) *Sale of property.* Except as provided in paragraphs (k) (4) and (5) of this section, net profit from the sale of real or personal property will be counted. In determining net profit from the sale of property owned prior to the date of entitlement, the value at the date of entitlement will be considered in relation to the selling price. Where payments are received in installments, payments will not be con-

sidered income until the claimant has received amounts equal to the value of the property at the date of entitlement. Principal and interest will not be counted separately.

(4) *Homes.* Net profit from the sale of the claimant's residence which is received during the calendar year of sale will not be considered as income under the following conditions:

(i) To the extent that it is applied within the calendar year of the sale, or the succeeding calendar year, to the purchase price of another residence as his principal dwelling;

(ii) Such application of the net profit is reported within 1 year following the date so applied, and

(iii) The net profit is so applied after January 10, 1962, to a purchase made after said date.

This exclusion will not apply where the net profit is applied to the price of a home purchased earlier than the calendar year preceding the calendar year of sale of the old residence.

(5) *Sale of property: Public Law 86-211 and dependency and indemnity compensation.* For pension under Pub. L. 86-211 (73 Stat. 432) and for dependency and indemnity compensation, profit from the sale of real or personal property other than in the course of a business will not be considered income. This applies to property acquired either before or after the date of entitlement. Any amounts received in excess of the sales price will be counted as income. Where payments are received in installments, principal and interest will not be counted separately. For pension, this provision is effective January 1, 1965; for dependency and indemnity compensation, January 1, 1967. (38 U.S.C. 503(a)(10); 38 U.S.C. 415(g)).

(6) *Payments on mortgages on real property: Public Law 86-211.* Effective January 1, 1971, for the purposes of Pub. L. 86-211 (73 Stat. 432), an amount equaling any prepayments made by a veteran or widow on a mortgage or similar type security instrument in existence at the death of veteran or spouse on real property which prior to the death was the principal residence of the veteran and spouse will be excluded from consideration as income if such payment was made after the death and prior to the close of the year succeeding the year of death. (38 U.S.C. 503(a)(14)).

(l) *Unusual medical expenses.* Within the provisions of paragraphs (l)(1) through (4) of this section there will be excluded from the amount of the claimant's annual income any unreimbursed amounts which have been paid within the calendar year for unusual medical expenses regardless of the year the indebtedness was incurred. The term "unusual" means "excessive". It does not describe the nature of a medical condition but rather the amount expended for medical treatment in relationship to the claimant's resources available for sustaining a reasonable mode of life. Unreimbursed expenditures which exceed 5 percent of the claimant's reported annual income will be considered unusual. Health, accident, sickness and hospitalization insurance premiums will be included as medical expenses in determining whether the claimant's unreimbursed medical expenses meet the criterion for "unusual." A claimant's statement as to amounts expended for medical expenses ordinarily will be accepted unless the circumstances create doubt as to its credibility. An estimate based on a clear and reasonable expectation that unusual medical expenditure will be realized may be accepted for the purpose of authorizing prospective payments of benefits subject to necessary adjustment in the award upon receipt of an amended estimate or after the end of the calendar year upon receipt of an income questionnaire.

(1) *Veterans.* For the purpose of Pub. L. 86-211 (73 Stat. 432), there will be excluded unreimbursed amounts paid by the veteran for unusual medical expenses of himself, his spouse, his children, his parents, and other of his relatives in the ascending as well as descending class whom he is under a moral or legal obligation to support and who are members or constructively members of his household.

(2) *Widows.* For the purposes of Pub. L. 86-211 (73 Stat. 432), there will be excluded unreimbursed amounts paid by the widow for the unusual medical expenses of herself, the veteran's children, and other of her rela-

ives in the ascending as well as descending class whom she is under a moral and legal obligation to support and who are members or constructively members of her household.

(3) *Children.* For the purposes of Pub. L. 86-211 (73 Stat. 432), there will be excluded unreimbursed amounts paid by a child for the unusual medical expenses of himself, his parent, and his brothers and sisters.

(4) *Parents.* For dependency and indemnity compensation purposes there will be excluded unreimbursed amounts paid by the parent for the unusual medical expenses of himself, his spouse, and other of his relatives in the ascending as well as the descending class whom he is under a moral or legal obligation to support and who are members of constructively members of his household. If the combined annual income of the parent and his spouse is the basis for dependency and indemnity compensation the exclusion is applicable to the combined annual income and extends to the unusual unreimbursed medical expenses of the spouse's relatives in the ascending as well as descending order whom she is under moral or legal obligation to support and who are members or constructively members of the household. (38 U.S.C. 415(g)(3); 503(c); 521(f); Pub. L. 92-198, 85 Stat. 663).

(m) *Veteran's final expenses; pension.* In claims for pension under Pub. L. 86-211 (73 Stat. 432), there will be excluded, as provided in paragraph (p) of this section:

(1) From the income of a widow, amounts equal to amounts she, as wife, paid for the expenses of the veteran's last illness;

(2) From the income of a widow, or of a child of a deceased veteran where there is no widow, amounts equal to amounts paid by the widow or child for the veteran's just debts, for the expenses of his last illness, and for the expenses of his burial to the extent such expenses are not reimbursed by the Veterans' Administration. (38 U.S.C. 503(a)(7)).

(n) *Final expenses of veteran's spouse or child; pension.* In claims for pension under Pub. L. 86-211 (73 Stat. 432), there will be excluded, as provided in paragraph (p) of this section:

(1) From the income of a veteran, amounts equal to amounts paid by him for the last illness and burial of his deceased spouse or child; and

(2) From the income of a wife or widow, amounts equal to amounts paid by her as wife or widow of the deceased veteran for the last illness and burial of a child of such veteran. (38 U.S.C. 503(a)(9)).

(o) *Final expenses of veteran or parent's spouse; dependency and indemnity compensation.* In claims for dependency and indemnity compensation there will be excluded from the income of a parent, as provided in paragraph (p) of this section, amounts equal to amounts paid by the parent for:

(1) The expenses of the veteran's last illness and burial to the extent that such expenses are not reimbursed under 38 U.S.C. ch. 23.

(2) The parent's deceased spouse's just debts, the expenses of the spouse's last illness to the extent such expenses are not reimbursed under 38 U.S.C. ch. 51 and the expenses of the spouse's burial to the extent that such expenses are not reimbursed under 38 U.S.C. ch. 23 or 51. (38 U.S.C. 415(g)).

(p) *Final expenses; year of exclusion.* For the purpose of paragraphs (m), (n) and (o) of this section, in the absence of contradictory information, the claimant's statement will be accepted as to the nature, amount and date of payment, and identity of the creditor. Except as provided in this paragraph, payments will be deducted from annual income for the year in which such payments are made. Payments made by a veteran, the wife or husband of a veteran, widow, widower, child or, in dependency and indemnity compensation claims, by a parent during the calendar year following the year in which the veteran, spouse or child died may be deducted from the claimant's income for the year of last illness or burial if this deduction is advantageous to the claimant.

(q) *Volunteer programs—(1) Payments under Foster Grandparent Program and Older Americans Community Service Programs.* Effective May 3, 1973, compensation received under the Foster Grandparent Program and the Older Americans Community Service

Programs will be excluded from income in claims for compensation, pension and dependency and indemnity compensation. (Pub. L. 93-29; 87 Stat. 55).

(2) *Payments under domestic volunteer service act programs.* Effective October 1, 1973, compensation or reimbursement received under a Domestic Volunteer Service Act Program (including Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Program for Local Services (PLS), ACTION Cooperative Volunteers (ACV), Foster Grandparent Program (FGP) and Older American Community Service Program, Retired Senior Volunteer Program (RSVP), Senior Companion Program, Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE), will be excluded from income in claims for compensation, pension and dependency and indemnity compensation. (Pub. L. 93-113; 87 Stat. 394).

[28 FR 32, Jan. 1, 1963, as amended at 29 FR 15205, Nov. 11, 1964; 29 FR 17092, Dec. 15, 1964; 31 FR 13390, Oct. 15, 1966; 31 FR 15632, Dec. 13, 1966; 32 FR 13224, Sept. 19, 1967; 36 FR 8446, May 6, 1971; 37 FR 6677, Apr. 1, 1972; 37 FR 21436, Oct. 11, 1972; 38 FR 26804, Sept. 26, 1973; 38 FR 28826, Oct. 17, 1973; 39 FR 28527, Aug. 8, 1974; 41 FR 17386, Apr. 26, 1976; 44 FR 45936, Aug. 6, 1979; 45 FR 31719, May 14, 1980; 46 FR 27075, May 15, 1981]

§ 3.263 Corpus of estate; net worth.

(a) *General.* The following rules are for application in determining the corpus of estate of a parent where dependency is a factor under § 3.250, and the net worth of a veteran, widow, widower or child where pension is subject to Pub. L. 86-211 (73 Stat. 432) under § 3.252(b). Only the estate of the parent, in claims based on dependency, or the estate of the veteran, widow, widower or child-claimant in claims for pension, will be considered. In the absence of contradictory information, the claimant's statement as to ownership and estimate of value will be accepted.

(b) *Definition.* "Corpus of estate" and "net worth" mean the market value, less mortgages or other encumbrances, of all real and personal property owned by the claimant except the claimant's dwelling (single-family unit) including a reasonable lot area, and personal effects suitable to and consistent with the claimant's reasonable mode of life.

(c) *Ownership.* See § 3.262(k).

(d) *Evaluation.* In determining whether some part of the claimant's estate should be consumed for his or her maintenance, consideration will be given to the amount of the claimant's income, together with the following factors: whether the property can be readily converted into cash at no substantial sacrifice; ability to dispose of property as limited by community property laws; life expectancy; number of dependents who meet the requirements of § 3.250(b)(2); potential rate of depletion, including unusual medical expenses under the principles outlined in § 3.262(l) for the claimant and his or her dependents.

[28 FR 33, Jan. 1, 1963, as amended at 39 FR 28527, Aug. 8, 1974; 44 FR 45936, Aug. 6, 1979]

CROSS REFERENCES: Reductions and discontinuances; dependency. See § 3.500(h).

Material change in income, net worth or change in status. See § 3.660.

Income and net worth questionnaires. See § 3.661.

§ 3.270 Applicability of various dependency, income and estate regulations.

(a) *Sections 3.250 to 3.270.* These sections are applicable to dependency, income and estate determinations needed to determine entitlement or continued entitlement for the following programs:

(1) Parents' death compensation.

(2) Old-law pension.

(3) Section 306 pension.

(4) Parents' dependency and indemnity compensation.

NOTE: Citations to Title 38, United States Code in §§ 3.250 to 3.270 referring to section 306 or old-law pension generally refer to provisions of law in effect on December 31, 1978.

(b) *Sections 3.271 to 3.300.* These sections apply to income and estate determinations of entitlement to the improved disability and death pension program which became effective January 1, 1979.

[44 FR 45936, Aug. 6, 1979]

REGULATIONS APPLICABLE TO THE IMPROVED PENSION PROGRAM WHICH BECAME EFFECTIVE JANUARY 1, 1979

SOURCE: Sections 3.271 to 3.277 appear at 44 FR 45936, Aug. 6, 1979, unless otherwise noted.

§ 3.271 Computation of income.

(a) *General.* Payments of any kind from any source shall be counted as income in the year in which received unless specifically excluded under § 3.272.

(b) *Salary.* Salary means the gross amount of a person's earnings or wages before any deductions are made for such things as taxes, insurance, retirement plans, social security, etc.

(c) *Business, farm or professional income.* (1) This includes gross income from a business, farm or profession as reduced by the necessary operating expenses such as cost of goods sold, or expenditures for rent, taxes, and upkeep, or costs of repairs or replacements. The value of an increase in stock inventory of a business is not considered income.

(2) Depreciation is not a deductible expense.

(3) A loss sustained in operating a business, profession, farm, or from investments, may not be deducted from income derived from any other source.

(d) *Income from property.* Income from real or personal property is countable as income of the property's owner. The terms of a recorded deed or other evidence of title shall constitute evidence of ownership. This includes property acquired through purchase, gift, devise, or descent. If property is owned jointly, income of the various owners shall be determined in proportion to shares of ownership of the property. The owner's shares of income held in partnership shall be determined on the basis of the facts found.

(e) *Installments.* Income shall be determined by the total amount received or anticipated during the calendar year.

(f) *Deferred determinations.* When an individual is unable to predict with certainty the amount of countable annual income, the annual rate of improved pension shall be reduced by the greatest amount of anticipated countable income until the end of the year, when total income received during the year will be determined and adjustments in pension payable made accordingly.

(g) *Compensation (civilian) for injury or death.* Compensation paid by the United States Department of Labor, Office of Workers' Compensation Programs, Social Security Administration, or the Railroad Retirement Board, or pursuant to any worker's compensation or employer's liability statute, or damages collected because of personal injury or death, will be considered income as received. However, medical, legal or other expenses incident to the injury or death, or incident to the collection or recovery of the amount of the award or settlement, may be deducted. The criteria in § 3.272(g) apply as to all medical expenditures after the award or settlement. (38 U.S.C. 210(c)).

(h) *Fractions of dollars.* Fractions of dollars will be disregarded in computing annual income.

§ 3.272 Exclusions from income.

The following shall be excluded from countable income for the purpose of determining entitlement to improved pension:

(a) *Welfare.* Donations from public or private relief, welfare, or charitable organizations. (38 U.S.C. 503(a)(1)).

(b) *Maintenance.* The value of maintenance furnished by a relative, friend, or a charitable organization (civic or governmental) will not be considered income. Where the individual is maintained in a rest home or other community institution or facility, public or private, because of impaired health or advanced age, money paid to the home or the individual to cover the cost of maintenance will not be considered income, regardless of whether it is furnished by a relative, friend, or charitable organization. The expense of maintenance is not deductible if it is paid from the individual's income. (38 U.S.C. 210(c), 503(a)(1)).

(c) *Veterans Administration pension benefits.* Payments under chapter 15 of title 38, United States Code. (38 U.S.C. 503(a)(2)).

(d) *Fire insurance.* Proceeds of fire insurance policies. (38 U.S.C. 503(a)(5)).

(e) *Profit from sale of property.* Profit realized from the disposition of real or personal property other than in the course of business, except amounts received in excess of the sales price, for example, interest on deferred sales is included as income. In installment sales, any payments received until the sales price is recovered are not included as income, but any amounts received which exceed the sales price are included, regardless of whether they represent principal or interest. (38 U.S.C. 503(a)(6)).

(f) *Joint accounts.* Amounts in joint accounts in banks and similar institutions acquired by reason of death of the other joint owner. (38 U.S.C. 503(a)(7)).

(g) *Medical expenses.* Within the provisions of the following subparagraphs, there will be excluded from the amount of an individual's annual income any unreimbursed amounts which have been paid within the year for medical expenses regardless of the year the indebtedness was incurred. An estimate based on a clear and reasonable expectation that unusual medical expenditure will be realized may be accepted for the purpose of authorizing prospective payments of benefits subject to necessary adjustment in the award upon receipt of an amended estimate, or after the end of the year upon receipt of an income questionnaire. (38 U.S.C. 503(a)(8)).

(1) *Veteran's income.* Unreimbursed medical expenses will be excluded when all of the following requirements are met:

(i) They were or will be paid by a veteran or spouse for medical expenses of the veteran, spouse, children, parents and other relatives for whom there is a moral or legal obligation of support;

(ii) They were or will be incurred on behalf of a person who is a member or a constructive member of the veteran's or spouse's household; and

(iii) They were or will be in excess of 5% of the applicable maximum annual pension rate or rates for the veteran (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the year in which the medical expenses were paid.

(2) *Surviving spouse's income.* Unreimbursed medical expenses will be excluded when all of the following requirements are met:

(i) They were or will be paid by a surviving spouse for medical expenses of the spouse, veteran's children, parents and other relatives for whom there is a moral or legal obligation of support;

(ii) They were or will be incurred on behalf of a person who is a member or a constructive member of the spouse's household; and

(iii) They were or will be in excess of 5% of the applicable maximum annual pension rate or rates for the spouse (including increased pension for family members but excluding increased pension because of need for aid and attendance or being housebound) as in effect during the year in which the medical expenses were paid.

(3) *Children's income.* Unreimbursed amounts paid by a child for medical expenses of self, parents, brothers and sisters, to the extent that such amounts exceed 5% of the maximum annual pension rate or rates payable to the child during the year in which the medical expenses were paid.

(h) *Expenses of last illnesses, burials and just debts.* The expenses specified in paragraphs (h) (1) and (2) of this section shall be deducted from annual income for the year in which their payment is made. However if payment is made during the year following that in which the death occurred, the deduction may be taken from the annual rate of income for the year of the last illness or burial if to do so is advantageous to the beneficiary. (38 U.S.C. 210(c)).

(1) *Veteran's final expenses.* (i) Amounts paid by a spouse or child before a veteran's death for expenses of the veteran's last illness will be deducted from the income of the surviving spouse or child.

(ii) Amounts paid by a surviving spouse or child of a veteran for the veteran's just debts, expenses of last illness and burial (to the extent such burial expenses are not reimbursed

under Chapter 23 of Title 38, United States Code) will be deducted from the income of the surviving spouse or child. (38 U.S.C. 503(a)(3)).

(2) *Spouse or child's final expenses.* (i) Amounts paid by a veteran for the expenses of the last illness and burial of the veteran's deceased spouse or child will be deducted from the veteran's income.

(ii) Amounts paid by a veteran's spouse or surviving spouse for expenses of the last illness and burial of the veteran's child will be deducted from the spouse's or surviving spouse's income. (38 U.S.C. 503(a)(4)).

(i) *Educational expenses.* Amounts equal to expenses paid by a veteran or surviving spouse pursuing a course of education or vocational rehabilitation or training, to include amounts paid for tuition, fees, books, and materials, and in the case of a veteran or surviving spouse in need of regular aid and attendance, unreimbursed amounts paid for unusual transportation expenses in connection with the pursuit of such course. Unusual transportation expenses are those exceeding the reasonable expenses which would have been incurred by a nondisabled person using an appropriate means of transportation (public transportation, if reasonably available). (38 U.S.C. 503(a)(9)).

(j) *Child's income.* In the case of a child, any current work income received during the year, to the extent that the total amount of such income does not exceed an amount equal to the sum of the following:

(1) The lowest amount of gross income for which a Federal income tax return must be filed, as specified in section 6012(a) of the Internal Revenue Code of 1954, by an individual who is not married (as determined under section 143 of such Code), and is not a surviving spouse (as defined in section 2(a) of such Code), and is not a head of household (as defined in section 2(b) of such Code); and

(2) If the child is pursuing a course of postsecondary education or vocational rehabilitation or training, the amount paid by the child for those educational expenses including the amount paid for tuition, fees, books, and materials. (38 U.S.C. 503(a)(10)).

(k) *Domestic Volunteer Service Act Programs.* Payments received under a Domestic Volunteer Service Act (DVSA) Program (including Volunteers in Service to America (VISTA), University Year for ACTION (UYA), Foster Grandparent Program (FGP) and Older American Community Service Program, Retired Senior Volunteer Program (RSVP), Senior Companion Program) shall be excluded as provided in paragraphs (k)(1) and (2) of this section:

(1) All DVSA payments received before December 13, 1979, shall be excluded from determining entitlement to improved pension. (42 U.S.C. 5044(g) (1973)).

(2) DVSA payments received after December 12, 1979, shall be excluded from determining entitlement to improved pension unless the Director of the ACTION Agency has determined that the value of all DVSA payments, adjusted to reflect the number of hours served by the volunteer, equals or exceeds the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage of the State where the volunteer served, whichever is the greater. (42 U.S.C. 5044(g) (1979)).

[44 FR 45936, Aug. 6, 1979, as amended at 46 FR 9580, Jan. 29, 1981]

§ 3.273 Rate computation.

(a) *Initial award.* For the purpose of determining initial entitlement, or for resuming payments on an award which was previously discontinued, the monthly rate of pension payable to a beneficiary shall be computed by reducing the beneficiary's applicable maximum pension rate by the beneficiary's annual rate of countable income on the effective date of entitlement and dividing the remainder by 12.

(b) *Running awards*—(1) *Change in maximum annual pension rate.* Whenever there is a change in a beneficiary's applicable maximum annual pension rate, the monthly rate of pension payable shall be computed by reducing the new applicable maximum annual pension rate by the beneficiary's annual rate of countable income on the effective date of the change in the

applicable maximum annual pension rate, and dividing the remainder by 12.

(2) *Change in annual rate of income.* Whenever there is a change in a beneficiary's annual rate of countable income the monthly rate of pension payable shall be computed by reducing the beneficiary's applicable maximum annual pension rate by the beneficiary's new annual rate of countable income on the effective date of the change in the annual rate of income, and dividing the remainder by 12.

(c) *Nonrecurring income.* The amount of any nonrecurring countable income (e.g. an inheritance) received by a beneficiary shall be added to the beneficiary's annual rate of income for a 12-month period commencing on the effective date on which the nonrecurring income is countable. (38 U.S.C. 210(c)).

§ 3.274 Relationship of net worth to pension entitlement.

(a) *Veteran.* Pension shall be denied or discontinued when the corpus of the estate of the veteran, and of the veteran's spouse, are such that under all the circumstances, including consideration of the annual income of the veteran, the veteran's spouse, and the veteran's children, it is reasonable that some part of the corpus of such estates be consumed for the veteran's maintenance. (38 U.S.C. 522(a)).

(b) *Increased pension payable to a veteran for a child.* Increased pension payable to a veteran on account of a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances including consideration of the veteran's and spouse's income and the income of the veteran's child or children, it is reasonable that some part of the corpus of such child's estate be consumed for the child's maintenance. (38 U.S.C. 522(b)).

(c) *Surviving spouse.* Pension payable to a surviving spouse shall be denied or discontinued when the corpus of the estate of the surviving spouse is such that under all the circumstances, including consideration of the surviving spouse's income and the income of any child for whom the surviving spouse is receiving pension, it is reasonable that some part of the corpus of the surviving spouse's estate be consumed for the surviving spouse's maintenance. (38 U.S.C. 543(a)(1)).

(d) *Increased pension payable to a surviving spouse for a child.* Increased pension payable to a surviving spouse on account of a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances, including consideration of the income of the surviving spouse and child and the income of any other child for whom the surviving spouse is receiving increased pension, it is reasonable that some part of the corpus of the child's estate be consumed for the maintenance of the child. (38 U.S.C. 543(a)(2)).

(e) *Child.* Pension payable to a child shall be denied or discontinued when the corpus of the estate of the child is such that under all the circumstances, including consideration of the income of the child, the income of any person with whom the child is residing who is legally responsible for such child's support, and the corpus of estate of such person, it is reasonable that some part of the corpus of such estates be consumed for the child's maintenance. (38 U.S.C. 543(b)).

§ 3.275 Criteria for evaluating net worth.

(a) *General.* The following rules are for application in determining the corpus of estate or net worth of a veteran, surviving spouse or child under § 3.274.

(b) *Definition.* The terms "corpus of estate" and "net worth" mean the market value, less mortgages or other encumbrances, of all real and personal property owned by the claimant, except the claimant's dwelling (single family unit), including a reasonable lot area, and personal effects suitable to and consistent with the claimant's reasonable mode of life.

(c) *Ownership.* See § 3.271(d).

(d) *Evaluation.* In determining whether some part of the claimant's estate (or combined estates under § 3.274 (a) and (e)) should be consumed for the claimant's maintenance, consideration will be given to the amount of the claimant's income together with the following: Whether

the property can be readily converted into cash at no substantial sacrifice; life expectancy; number of dependents who meet the definition of "member of the family" (the definition contained in § 3.250(b)(2) is applicable to the improved pension program); potential rate of depletion, including unusual medical expenses under the principles outlined in § 3.272(g) for the claimant and the claimant's dependents.

(e) *Educational expenses.* There shall be excluded from the corpus of estate or net worth of a child reasonable amounts for actual or prospective educational or vocational expenses. The amount so excluded shall not be such as to provide for education or training beyond age 23. (38 U.S.C. 210(c)).

§ 3.276 Certain transfers or waivers disregarded.

(a) *Waiver of receipt of income.* Potential income, not excludable under § 3.272 and whose receipt has been waived by an individual, shall be included as countable income of that individual for Veterans Administration pension purposes.

(b) *Transfer of assets.* For pension purposes, a gift of property made by an individual to a relative residing in the same household shall not be recognized as reducing the corpus of the grantor's estate. A sale of property to such a relative shall not be recognized as reducing the corpus of the seller's estate if the purchase price, or other consideration for the sale, is so low as to be tantamount to a gift. A gift of property to someone other than a relative residing in the grantor's household will not be recognized as reducing the corpus of the grantor's estate unless it is clear that the grantor has relinquished all rights of ownership, including the right of control of the property. (38 U.S.C. 210(c)).

§ 3.277 Income and net worth reports.

(a) *Evidence of entitlement.* As a condition of granting or continuing pension, the Veterans Administration may require from any person who is an applicant for or a recipient of pension such information, proofs, and evidence as is necessary to determine the annual income and the value of the corpus of the estate of such person, and of any spouse or child for whom the person is receiving or is to receive increased pension (such child is hereinafter in this section referred to as a "dependent child"), and, in the case of a child applying for or in receipt of pension in his or her own behalf (hereinafter in this section referred to as a "surviving child"), of any person with whom such child is residing who is legally responsible for such child's support.

(b) *Required annual report.* It is required that every pension applicant or beneficiary file a report each year, showing:

(1) The annual income which such applicant or beneficiary (and any such person's spouse or dependent child) received during the preceding year, the corpus of the estate of such applicant or beneficiary (and of any such person's spouse or dependent child) at the end of such year, and in the case of a surviving child, the income and corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support;

(2) The applicant's or beneficiary's estimate for the then current year of the annual income such applicant or beneficiary (and any such person's spouse or dependent child) expects to receive and of any expected increase in the value of the corpus of the estate of such applicant or beneficiary (and for any such person's spouse or dependent child); and in the case of a surviving child, an estimate for the then current year of the annual income of any person with whom such child is residing who is legally responsible for such child's support, and of any expected increase in the value of the corpus of the estate of such person;

(c) *Required revised report.* It is required that any pension applicant or beneficiary promptly file a revised report whenever there is a material change in the estimated annual income of such applicant or beneficiary (or of any such person's spouse or dependent child) or a material change in such applicant's or beneficiary's estimate of the value of the corpus of the estate of such applicant or benefi-

ciary (or of any such person's spouse or dependent child), and in the case of a surviving child, a material change in the estimated annual income or value of the corpus of the estate of any person with whom such child is residing who is legally responsible for such child's support; it is also required that any such applicant or beneficiary applying for or in receipt of increased pension on account of a person who is a spouse or child of such applicant or beneficiary promptly notify the Veterans Administration if such person ceases to meet the applicable definition of spouse or child. (38 U.S.C. 506(a)).

RATINGS AND EVALUATIONS; BASIC ENTITLEMENT CONSIDERATIONS

§ 3.301 Line of duty and misconduct.

(a) *Line of duty.* Direct service connection may be granted only when a disability or cause of death was incurred or aggravated in line of duty, and not the result of the veteran's own willful misconduct. (38 U.S.C. 105)

(b) *Vicious habits.* Disability pension is not payable for any condition due to the veteran's own willful misconduct or vicious habits. A vicious habit is a corrupt or immoral act which has been repeated so that it has become a regular and fixed mode of action. A single incident however vicious is not a vicious habit. (38 U.S.C. 521).

(c) *Specific applications.* For the purpose of determining entitlement to service-connected and nonservice-connected benefits the definitions in § 3.1 (m) and (n) apply except as modified within the following paragraphs. The provisions of paragraphs (c) (2) and (3) of this section are subject to the provisions of § 3.302 where applicable.

(1) *Venereal disease.* The residuals of venereal disease are not to be considered the result of willful misconduct. Consideration of service connection for residuals of venereal disease as having been incurred in service requires that the initial infection must have occurred during active service. Increase in service of manifestations of venereal disease will usually be held due to natural progress unless the facts of record indicate the increase in manifestations was precipitated by trauma or by the conditions of the veteran's service, in which event service connection may be established by aggravation. Medical principles pertaining to the incubation period and its relation to the course of the disease; i.e., initial or acute manifestation, or period and course of secondary and late residuals manifested, will be considered when time of incurrence of venereal disease prior to or after entry into service is at issue. In the issue of service connection, whether the veteran complied with service regulations and directives for reporting the disease and undergoing treatment is immaterial after November 14, 1972, and the service department characterization of acquisition of the disease as "willful misconduct" or as "not in line of duty" will not govern.

(2) *Alcoholism.* The simple drinking of alcoholic beverage is not of itself willful misconduct. The deliberate drinking of a known poisonous substance or under conditions which would raise a presumption to that effect will be considered willful misconduct. If, in the drinking of a beverage to enjoy its intoxicating effects, intoxication results approximately and immediately in disability or death, the disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of alcohol as a beverage, whether out of compulsion or otherwise, will not be considered of willful misconduct origin.

(3) *Drug usage.* The isolated and infrequent use of drugs by itself will not be considered willful misconduct; however, the progressive and frequent use of drugs to the point of addiction will be considered willful misconduct. Where drugs are used to enjoy or experience their effects and the effects result proximately and immediately in disability or death, such disability or death will be considered the result of the person's willful misconduct. Organic diseases and disabilities which are a secondary result of the chronic use of drugs and infections coinciding with the injection of drugs will not be considered of willful misconduct origin. Similarly, where drugs are used for therapeutic purposes or where use

of drugs or addiction thereto, results from a service-connected disability, it will not be considered of misconduct origin. (38 U.S.C. 105, 310, 321, 331, 401, and 521(a)).

[26 FR 1579, Feb. 24, 1961, as amended at 37 FR 24662, Nov. 18, 1972]

CROSS REFERENCES: In line of duty. See § 3.1(m).
Willful misconduct. See § 3.1(n).

§ 3.302 Service connection for mental unsoundness in suicide.

(a) *General.* (1) In order for suicide to constitute willful misconduct, the act of self-destruction must be intentional.

(2) A person of unsound mind is incapable of forming an intent (mens rea, or guilty mind, which is an essential element of crime of willful misconduct).

(3) It is a constant requirement for favorable action that the precipitating mental unsoundness be service connected.

(b) *Evidence of mental condition.* (1) Whether a person, at the time of suicide, was so unsound mentally that he did not realize the consequence of such an act, or was unable to resist such impulse is a question to be determined in each individual case, based on all available lay and medical evidence pertaining to his mental condition at the time of suicide.

(2) The act of suicide or a bona fide attempt is considered to be evidence of mental unsoundness. Therefore, where no reasonable adequate motive for suicide is shown by the evidence, the act will be considered to have resulted from mental unsoundness.

(3) A reasonable adequate motive for suicide may be established by affirmative evidence showing circumstances which could lead a rational man to self-destruction.

(c) *Evaluation of evidence.* (1) Affirmative evidence is necessary to justify reversal of service department findings of mental unsoundness where Veterans Administration criteria do not otherwise warrant contrary findings.

(2) In all instances any reasonable doubt should be resolved favorably to support a finding of service connection (see § 3.102).

[28 FR 183, Jan. 8, 1963]

CROSS REFERENCE: Cause of death. See § 3.312.

RATINGS AND EVALUATIONS; SERVICE CONNECTION

§ 3.303 Principles relating to service connection.

(a) *General.* Service connection connotes many factors but basically it means that the facts, shown by evidence, establish that a particular injury or disease resulting in disability was incurred coincident with service in the Armed Forces, or if preexisting such service, was aggravated therein. This may be accomplished by affirmatively showing inception or aggravation during service or through the application of statutory presumptions. Each disabling condition shown by a veteran's service records, or for which he seeks a service connection must be considered on the basis of the places, types and circumstances of his service as shown by service records, the official history of each organization in which he served, his medical records and all pertinent medical and lay evidence. Determinations as to service connection will be based on review of the entire evidence of record, with due consideration to the policy of the Veterans Administration to administer the law under a broad and liberal interpretation consistent with the facts in each individual case.

(b) *Chronicity and continuity.* With chronic disease shown as such in service (or within the presumptive period under § 3.307) so as to permit a finding of service connection, subsequent manifestations of the same chronic disease at any later date, however remote, are service connected, unless clearly attributable to intercurrent causes. This rule does not mean that any manifestation of joint pain, any abnormality of heart action or heart sounds, any urinary findings of casts, or any cough, in service will permit service connection of arthritis, disease of the heart, nephritis, or pulmonary disease, first shown as a clearcut clinical entity, at some later date. For the showing of chronic disease in service there is required a combination of manifestations sufficient to identify

the disease entity, and sufficient observation to establish chronicity at the time, as distinguished from merely isolated findings or a diagnosis including the word "Chronic." When the disease identity is established (leprosy, tuberculosis, multiple sclerosis, etc.), there is no requirement of evidentiary showing of continuity. Continuity of symptomatology is required only where the condition noted during service (or in the presumptive period) is not, in fact, shown to be chronic or where the diagnosis of chronicity may be legitimately questioned. When the fact of chronicity in service is not adequately supported, then a showing of continuity after discharge is required to support the claim.

(c) *Preservice disabilities noted in service.* There are medical principles so universally recognized as to constitute fact (clear and unmistakable proof), and when in accordance with these principles existence of a disability prior to service is established, no additional or confirmatory evidence is necessary. Consequently with notation or discovery during service of such residual conditions (scars; fibrosis of the lungs; atrophies following disease of the central or peripheral nervous system; healed fractures; absent, displaced or resected parts of organs; supernumerary parts; congenital malformations or hemorrhoidal tags or tabs, etc.) with no evidence of the pertinent antecedent active disease or injury during service the conclusion must be that they preexisted service. Similarly, manifestation of lesions or symptoms of chronic disease from date of enlistment, or so close thereto that the disease could not have originated in so short a period will establish preservice existence thereof. Conditions of an infectious nature are to be considered with regard to the circumstances of the infection and if manifested in less than the respective incubation periods after reporting for duty, they will be held to have preexisted service. In the field of mental disorders, personality disorders which are characterized by developmental defects or pathological trends in the personality structure manifested by a lifelong pattern of action or behavior, chronic psychoneurosis of long duration or other psychiatric symptomatology shown to have existed prior to service with the same manifestations during service, which were the basis of the service diagnosis, will be accepted as showing preservice origin. Congenital or developmental defects, refractive error of the eye, personality disorders and mental deficiency as such are not diseases or injuries within the meaning of applicable legislation.

(d) *Postservice initial diagnosis of disease.* Service connection may be granted for any disease diagnosed after discharge, when all the evidence, including that pertinent to service, establishes that the disease was incurred in service. Presumptive periods are not intended to limit service connection to diseases so diagnosed when the evidence warrants direct service connection. The presumptive provisions of the statute and Veterans Administration regulations implementing them are intended as liberalizations applicable when the evidence would not warrant service connection without their aid.

[26 FR 1579, Feb. 24, 1961]

§ 3.304 Direct service connection; wartime and peacetime.

(a) *General.* The basic considerations relating to service connection are stated in § 3.303. The criteria in this section apply only to disabilities which may have resulted from service in a period of war or service rendered on or after January 1, 1947.

(b) *Presumption of soundness.* The veteran will be considered to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities, or disorders noted at entrance into service, or where clear and unmistakable (obvious or manifest) evidence demonstrates that an injury or disease existed prior thereto. Only such conditions as are recorded in examination reports are to be considered as noted. (38 U.S.C. 311; Public Law 89-358).

(1) History of preservice existence of conditions recorded at the time of examination does not constitute a notation of such conditions but will be considered together with all other material evidence in determinations as to in-

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ception. Determinations should not be based on medical judgment alone as distinguished from accepted medical principles, or on history along without regard to clinical factors pertinent to the basic character, origin and development of such injury or disease. They should be based on thorough analysis of the evidentiary showing and careful correlation of all material facts, with due regard to accepted medical principles pertaining to the history, manifestations, clinical course, and character of the particular injury or disease or residuals thereof.

(2) History conforming to accepted medical principles should be given due consideration, in conjunction with basic clinical data, and be accorded probative value consistent with accepted medical and evidentiary principles in relation to value consistent with accepted medical evidence relating to incurrence, symptoms and course of the injury or disease, including official and other records made prior to, during or subsequent to service, together with all other lay and medical evidence concerning the inception, development and manifestations of the particular condition will be taken into full account.

(3) Signed statements of veterans relating to the origin, or incurrence of any disease or injury made in service if against his or her own interest is of no force and effect if other data do not establish the fact. Other evidence will be considered as though such statement were not of record. (10 U.S.C. 1219).

(c) *Development.* The development of evidence in connection with claims for service connection will be accomplished when deemed necessary but it should not be undertaken when evidence present is sufficient for this determination. In initially rating disability of record at the time of discharge, the records of the service department, including the reports of examination at enlistment and the clinical records during service, will ordinarily suffice. Rating of combat injuries or other conditions which obviously had their inception in service may be accomplished pending receipt of copy of the examination at enlistment and all other service records.

(d) *Combat.* Satisfactory lay or other evidence that an injury or disease was incurred or aggravated in combat will be accepted as sufficient proof of service connection if the evidence is consistent with the circumstances, conditions or hardships of such service even though there is no official record of such incurrence or aggravation. (38 U.S.C. 354(b)).

(e) *Prisoners of war.* Where disability compensation is claimed by a former prisoner of war, omission of history or findings from clinical records made upon repatriation is not determinative of service connection, particularly if evidence of comrades in support of the incurrence of the disability during confinement is available. Special attention will be given to any disability first reported after discharge, especially if poorly defined and not obviously of intercurrent origin. The circumstances attendant upon the individual veteran's confinement and the duration thereof will be associated with pertinent medical principles in determining whether disability manifested subsequent to service is etiologically related to the prisoner of war experience.

[26 FR 1580, Feb. 24, 1961, as amended at 31 FR 4680, Mar. 19, 1966; 39 FR 34530, Sept. 26, 1974]

§ 3.305 Direct service connection; peacetime service before January 1, 1947.

(a) *General.* The basic considerations relating to service connection are stated in § 3.303. The criteria in this section apply only to disabilities which may have resulted from service other than in a period of war before January 1, 1947.

(b) *Presumption of soundness.* A peacetime veteran who has had active, continuous service of 6 months or more will be considered to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities or disorders noted at the time thereof, or where evidence or medical judgment, as distinguished from medical fact and principles, establishes that an injury or disease preexisted service. Any evidence acceptable as competent to indicate the time of existence or inception

of the condition may be considered. Determinations based on medical judgment will take cognizance of the time of inception or manifestation of disease or injury following entrance into service, as shown by proper service authorities in service records, entries or reports. Such records will be accorded reasonable weight in consideration of other evidence and sound medical reasoning. Opinions may be solicited from Veterans Administration medical authorities when considered necessary.

(c) *Campaigns and expeditions.* In considering claims of veterans who engaged in combat during campaigns or expeditions satisfactory lay or other evidence of incurrence or aggravation in such combat of an injury or disease, if consistent with the circumstances, conditions or hardships of such service will be accepted as sufficient proof of service connection, even when there is no official record of incurrence or aggravation. Service connection for such injury or disease may be rebutted by clear and convincing evidence to the contrary.

[26 FR 1580, Feb. 24, 1961, as amended at 28 FR 3088, Mar. 29, 1963; 39 FR 34530, Sept. 26, 1974]

§ 3.306 Aggravation of preservice disability.

(a) *General.* A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease. (38 U.S.C. 353).

(b) *War service.* Clear and unmistakable evidence (obvious or manifest) is required to rebut the presumption of aggravation where the preservice disability underwent an increase in severity during service. This includes medical facts and principles which may be considered to determine whether the increase is due to the natural progress of the condition. Aggravation may not be conceded where the disability underwent no increase in severity during service on the basis of all the evidence of record pertaining to the manifestations of the disability prior to, during and subsequent to service.

(1) The usual effects of medical and surgical treatment in service, having the effect of ameliorating disease or other conditions incurred before enlistment, including postoperative scars, absent or poorly functioning parts or organs, will not be considered service connected unless the disease or injury is otherwise aggravated by service.

(2) Due regard will be given the places, types, and circumstances of service and particular consideration will be accorded combat duty and other hardships of service. The development of symptomatic manifestations of a preexisting disease or injury during or proximately following action with the enemy or following a status as a prisoner of war will establish aggravation of a disability. (38 U.S.C. 354).

(c) *Peacetime service.* The specific finding requirement that an increase in disability is due to the natural progress of the condition will be met when the available evidence of a nature generally acceptable as competent shows that the increase in severity of a disease or injury or acceleration in progress was that normally to be expected by reason of the inherent character of the condition, aside from any extraneous or contributing cause or influence peculiar to military service. Consideration will be given to the circumstances, conditions, and hardships of service.

[26 FR 1580, Feb. 24, 1961]

§ 3.307 Presumptive service connection for chronic, tropical or prisoner of war related disease; wartime and service on or after January 1, 1947.

(a) *General.* A chronic, tropical or prisoner of war related disease listed in § 3.309 will be considered to have been incurred in service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in § 3.309(a) will be considered chronic.

(1) *Service.* The veteran must have served 90 days or more during a war period or after December 31, 1946. The requirement of 90 days' service means active, continuous service within or extending into or beyond a war period, or which began before and extended

beyond December 31, 1946, or began after that date. Any period of service is sufficient for the purpose of establishing the presumptive service connection of a specified disease under the conditions listed in § 3.309(c).

(2) *Separation from service.* For the purpose of paragraph (a) (3), (4) and (5) of this section the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period. In claims based on service on or after January 1, 1947, the date of separation will be the date of discharge or release from the period of service on which the claim is based.

(3) *Chronic disease.* The disease must have become manifest to a degree of 10 percent or more within 1 year (for Hansen's disease (leprosy) and tuberculosis, within 3 years; multiple sclerosis, within 7 years) from the date of separation from service as specified in paragraph (a)(2) of this section.

(4) *Tropical disease.* The disease must have become manifest to a degree of 10 percent or more within 1 year from date of separation from service as specified in paragraph (a)(2) of this section, or at a time when standard accepted treatises indicate that the incubation period commenced during such service. The resultant disorders or diseases originating because of therapy administered in connection with a tropical disease or as a preventative may also be service connected. (38 U.S.C. 312).

(5) *Diseases specific as to prisoners of war.* The disease must have become manifest to a degree of 10 percent or more at any time after service, except psychosis which must have become manifest to a degree of 10 percent within 2 years from the date of separation from service as specified in paragraph (a)(2) of this section. (38 U.S.C. 312; Pub. L. 91-376, 84 Stat. 787).

(b) *Evidentiary basis.* The factual basis may be established by medical evidence, competent lay evidence or both. Medical evidence should set forth the physical findings and symptomatology elicited by examination within the applicable period. Lay evidence should describe the material and relevant facts as to the veteran's disability observed within such period, not merely conclusions based upon opinion. The chronicity and continuity factors outlined in § 3.303(b) will be considered. The diseases listed in § 3.309(a) will be accepted as chronic, even though diagnosed as acute because of insidious inception and chronic development, except: (1) Where they result from intercurrent causes, for example, cerebral hemorrhage due to injury, or active nephritis or acute endocarditis due to intercurrent infection (with or without identification of the pathogenic micro-organism); or (2) where a disease is the result of drug ingestion or a complication of some other condition not related to service. Thus, leukemia will be accepted as a chronic disease whether diagnosed as acute or chronic. Unless the clinical picture is clear otherwise, consideration will be given as to whether an acute condition is an exacerbation of a chronic disease. Where, for the purposes of § 3.309(c), the issue is presented as to whether a prisoner of war suffered from dietary deficiencies, forced labor, or inhumane treatment (in violation of the terms of the Geneva Conventions of July 27, 1929, and August 12, 1949), while held as a prisoner of war, it will be resolved on the basis of all evidence available including the statements of comrades and the veteran's own statement in certified form. (38 U.S.C. 312; Pub. L. 91-376, 84 Stat. 787).

(c) *Prohibition of certain presumptions.* No presumptions may be invoked on the basis of advancement of the disease when first definitely diagnosed for the purpose of showing its existence to a degree of 10 percent within the applicable period. This will not be interpreted as requiring that the disease be diagnosed in the presumptive period, but only that there be then shown by acceptable medical or lay evidence characteristic manifestations of the disease to the required degree, followed without unreasonable time lapse by definite diagnosis. Symptomatology shown in the prescribed period may have no particular significance when first observed, but in the light of subsequent developments it may gain considerable significance.

Cases in which a chronic condition is shown to exist within a short time following the applicable presumptive period, but without evidence of manifestations within the period, should be developed to determine whether there was symptomatology which in retrospect may be identified and evaluated as manifestation of the chronic disease to the required 10-percent degree. The consideration of service incurrence provided for chronic diseases will not be interpreted to permit any presumption as to aggravation of a preservice disease or injury after discharge.

(d) *Rebuttal of service incurrence.* Evidence which may be considered in rebuttal of service incurrence of a disease listed in § 3.309 will be any evidence of a nature usually accepted as competent to indicate the time of existence or inception of disease, and medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease. The expression "affirmative evidence to the contrary" will not be taken to require a conclusive showing, but such showing as would, in sound medical reasoning and in the consideration of all evidence of record, support a conclusion that the disease was not incurred in service. As to tropical diseases the fact that the veteran had no service in a locality having a high incidence of the disease may be considered as evidence to rebut the presumption, as may residence during the period in question in a region where the particular disease is endemic. The known incubation periods of tropical diseases should be used as a factor in rebuttal of presumptive service connection as showing inception before or after service. (38 U.S.C. 313).

[26 FR 1581, Feb. 24, 1961, as amended at 35 FR 18281, Dec. 1, 1970; 39 FR 34530, Sept. 26, 1974; 43 FR 45347, Oct. 2, 1978]

§ 3.308 Presumptive service connection; peace-time service before January 1, 1947.

(a) *Chronic disease.* There is no provision for presumptive service connection for chronic disease as distinguished from tropical diseases referred to in paragraph (b) of this section based on peacetime service before January 1, 1947.

(b) *Tropical disease.* In claims based on peacetime service before January 1, 1947, a veteran of 6 months or more service who contracts a tropical disease listed in § 3.309(b) or a resultant disorder or disease originating because of therapy administered in connection with a tropical disease or as a preventative, will be considered to have incurred such disability in service when it is shown to exist to the degree of 10 percent or more within 1 year after separation from active service, or at a time when standard and accepted treatises indicate that the incubation period commenced during active service unless shown by clear and unmistakable evidence not to have been of service origin. The requirement of 6 months or more service means active, continuous service, during one or more enlistment periods. (38 U.S.C. 333).

[39 FR 34530, Sept. 26, 1974]

§ 3.309 Disease subject to presumptive service connection.

(a) *Chronic diseases.* The following diseases may be considered for service connection although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limits under § 3.307 following service in a period of war or following peacetime service on or after January 1, 1947.

Anemia, primary.
Arteriosclerosis.
Arthritis.
Atrophy, progressive muscular.
Brain hemorrhage.
Brain thrombosis.
Bronchiectasis.
Calculi of the kidney, bladder, or gallbladder.
Cardiovascular-renal disease, including hypertension. (This term applies to combination involvement of the type of arteriosclerosis, nephritis, and organic heart disease, and since hypertension is an early symptom long preceding the development of those diseases in their more obvious forms, a disabling hypertension within the 1-year period will be given the same benefit of service connection as any of the chronic diseases listed.)
Cirrhosis of the liver.
Coccidioidomycosis.
Diabetes mellitus.
Encephalitis lethargica residuals.

Endocarditis (This term covers all forms of valvular heart disease.)
Endocrinopathies.
Epilepsies.
Hansen's disease.
Hodgkin's disease.
Leukemia.
Myasthenia gravis.
Myelitis.
Myocarditis.
Nephritis.
Other organic diseases of the nervous system.
Osteitis deformans (Paget's disease).
Osteomalacia.
Palsy, bulbar.
Paralysis agitans.
Psychoses.
Purpura idiopathic, hemorrhagic.
Raynaud's disease.
Sarcoidosis.
Scleroderma.
Sclerosis, amyotrophic lateral.
Sclerosis, multiple.
Syringomyelia.
Thromboangiitis obliterans (Buerger's disease).
Tuberculosis, active.
Tumors, malignant, or of the brain or spinal cord or peripheral nerves.
Ulcers, peptic (gastric or duodenal) (A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology; in short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data.

(b) *Tropical diseases.* The following diseases may be considered for service connection as a result of tropical service, although not otherwise established as incurred in service if manifested to a compensable degree within the applicable time limit under §§ 3.307 or 3.308 following service in a period of war or following peacetime service.

Amebiasis.
Blackwater fever.
Cholera.
Dracontiasis.
Dysentery.
Filariasis.
Leishmaniasis, including kala-azar.
Loiasis.
Malaria.
Onchocerciasis.
Oroya fever.
Pinta.
Plague.
Schistosomiasis.
Yaws.
Yellow fever.

Resultant disorders or diseases originating because of therapy administered in connection with such diseases or as a preventative thereof.

(c) *Diseases specific as to prisoners of war.* The following diseases may be considered for service connection although not otherwise established as incurred in service if manifested to a compensable degree under the provisions of § 3.307(a)(5) and if the veteran, while held as a prisoner of war by an enemy Government or its agents during World War II, the Korean conflict, or the Vietnam era, suffered from dietary deficiencies, forced labor, or inhumane treatment (in violation of the terms of the Geneva Conventions of July 27, 1929, and August 12, 1949). If the veteran was held for not less than 6 months by the Imperial Japanese Government or the German Government during World War II, by the Government of North Korea during the Korean conflict, or by the Government of North Korea or the Government of North Vietnam or the Viet Cong forces during the Vietnam era, or by their respective agents, the veteran shall be deemed to have suffered from such dietary deficiencies, forced labor, and inhumane treatment:

Avitaminosis.
Beriberi (including beriberi heart disease).
Chronic dysentery.
Helminthiasis.
Malnutrition (including optic atrophy associated with malnutrition).
Pellagra.
Any other nutritional deficiency.
Psychosis.

(38 U.S.C. 312)

[26 FR 1582, Feb. 24, 1961, as amended at 31 FR 4680, Mar. 19, 1966; 35 FR 18281, Dec. 1, 1970; 39 FR 34530, Sept. 26, 1974; 41 FR 55873, Dec. 23, 1976]

§ 3.310 Proximate results, secondary conditions.

(a) *General.* Disability which is proximately due to or the result of a service-connected disease or injury shall be service connected. When serv-

ice connection is thus established for a secondary condition, the secondary condition shall be considered a part of the original condition.

(b) *Cardiovascular disease.* Ischemic heart disease or other cardiovascular disease developing in a veteran who has a service-connected amputation of one lower extremity at or above the knee or service-connected amputations of both lower extremities at or above the ankles, shall be held to be the proximate result of the service-connected amputation or amputations. (38 U.S.C. 210(c), 310.331).

[44 FR 50340, Aug. 28, 1979]

§ 3.311 [Reserved]

§ 3.312 Cause of death.

(a) General. The death of a veteran will be considered as having been due to a service-connected disability when the evidence establishes that such disability was either the principal or a contributory cause of death. The issue involved will be determined by exercise of sound judgment, without recourse to speculation, after a careful analysis has been made of all the facts and circumstances surrounding the death of the veteran, including, particularly, autopsy reports.

(b) *Principal cause of death.* The service-connected disability will be considered as the principal (primary) cause of death when such disability, singly or jointly with some other condition, was the immediate or underlying cause of death or was etiologically related thereto.

(c) *Contributory cause of death.* (1) Contributory cause of death is inherently one not related to the principal cause. In determining whether the service-connected disability contributed to death, it must be shown that it contributed substantially or materially; that it combined to cause death; that it aided or lent assistance to the production of death. It is not sufficient to show that it casually shared in producing death, but rather it must be shown that there was a casual connection.

(2) Generally, minor service-connected disabilities, particularly those of a static nature or not materially affecting a vital organ, would not be held to have contributed to death primarily due to unrelated disability. In the same category there would be included service-connected disease or injuries of any evaluation (even though evaluated as 100 percent disabling) but of a quiescent or static nature involving muscular or skeletal functions and not materially affecting other vital body functions.

(3) Service-connected diseases or injuries involving active processes affecting vital organs should receive careful consideration as a contributory cause of death, the primary cause being unrelated, from the viewpoint of whether there were resulting debilitating effects and general impairment of health to an extent that would render the person materially less capable of resisting the effects of other disease or injury primarily causing death. Where the service-connected condition affects vistal organs as distinguished from muscular or skeletal functions and is evaluated as 100 percent disabling, debilitation may be assumed.

(4) There are primary causes of death which by their very nature are so overwhelming that eventual death can be anticipated irrespective of coexisting conditions, but, even in such cases, there is for consideration whether there may be a reasonable basis for holding that a service-connected condition was of such severity as to have a material influence in accelerating death. In this situation, however, it would not generally be reasonable to hold that a service-connected condition accelerated death unless such condition affected a vital organ and was of itself of a progressive or debilitating nature.

[26 FR 1582, Feb. 24, 1961]

CROSS REFERENCES: Reasonable doubt. See § 3.102.

Service connection for mental unsoundness in suicide. See § 3.302.

§ 3.313 [Reserved]

§ 3.314 Basic pension determinations.

(a) *Prior to the Mexican border period.* While pensions are granted based on certain service prior to the Mexican border period, the only rating factors in claims therefor are:

(1) Claims based on service of less than 90 days in the Spanish-American War require a rating determination as to whether the veteran was discharged or released from service for a service-connected disability or had at the time of separation from service a service-connected disability, shown by official service records, which in medical judgment would have warranted a discharge for disability. Eligibility in such cases requires a finding that the disability was incurred in or aggravated by service in line of duty without benefit of presumptive provisions of law or Veterans Administration regulations. (38 U.S.C. 512).

(2) Veterans entitled to pension on the basis of service in the Spanish-American War may be entitled to an increased rate of pension if rated as being in need of regular aid and attendance. Veterans who have elected pension under Pub. L. 86-211 (73 Stat. 432) who are not rated as being in need of regular aid and attendance may be entitled to increased pension based on 100 percent permanent disability together with independent disability of 60 percent or more or by reason of being permanently housebound as provided in § 3.351 (d). (38 U.S.C. 502 (b), (c), 512).

(b) *Mexican border period and later war periods.* Non-service-connected disability and death pension may be paid based on service in the Mexican border period, World War I, World War II, the Korean conflict and the Vietnam era. Rating determinations in such claims will be required in the following situations:

(1) Claims based on service of less than 90 days may require a determination as to whether the veteran was discharged or released from service for a service-connected disability or had at the time of separation from service a service-connected disability, shown by official service records, which in medical judgment would have warranted a discharge for disability. Eligibility in such cases requires a finding that the disability was incurred in or aggravated by service in line of duty without benefit of presumptive provisions of law or Veterans Administration regulations (38 U.S.C. 521(g)(2)) unless, in the case of death pension, the veteran was, at the time of death, receiving (or entitled to receive) compensation or retirement pay based upon a wartime service-connected disability. (38 U.S.C. 541(a) and 542(a)).

(2) Determinations of permanent total disability for pension purposes will be based on non-service-connected disability or combined non-service-connected and service-connected disabilities not the result of willful misconduct or vicious habits. However, for pension under Pub. L. 86-211 (73 Stat. 432), permanent and total disability will be presumed where the veteran has attained age 65 or effective January 1, 1977, where the veteran became unemployable after age 65. (38 U.S.C. 502(a), 523(a)).

(3) Veterans entitled to non-service-connected disability pension may be entitled to an increased rate of pension if rated as being in need of regular aid and attendance. Veterans entitled to protected pension or pension under Pub. L. 86-211 (73 Stat. 432) who are not rated as being in need of regular aid and attendance may be entitled to increased pension based on a 100 percent permanent disability together with independent disability of 60 percent or more or by reason of being permanently housebound as provided in § 3.351 (d) or (e). (38 U.S.C. 502 (b), (c), 521; Pub. L. 90-77).

[31 FR 4680, Mar. 19, 1966, as amended at 32 FR 13224, Sept. 19, 1967; 36 FR 8446, May 6, 1971; 40 FR 56434, Dec. 3, 1975; 41 FR 56804, Dec. 30, 1976]

§ 3.315 Basic eligibility determinations; dependents, loans, education.

(a) *Child over 18 years.* A child of a veteran may be considered a "child" after age 18 for purposes of benefits under title 38, United States Code (except ch. 19 and sec. 5202(b) of ch. 85), if found by a rating determination to have become, prior to age 18, permanently incapable of self-support. (38 U.S.C. 101(4)(B)).

(b) *Loans.* Where a World War II veteran or a Korean conflict veteran had less than 90 days' service, or a veteran who served after July 25, 1947 and prior to June 27, 1950 or on or after February 1, 1955, had less than 181 days' service on active duty as de-

fined in §§ 36.4301(gg) and 36.4501(o) of this chapter, eligibility of the veteran for a loan under 38 U.S.C. ch. 37 requires a determination that the veteran was discharged or released because of a service-connected disability or that the official service department records show that he or she had at the time of separation from service a service-connected disability which in medical judgment would have warranted a discharge for disability. These determinations are subject to the presumption of incurrence under § 3.304(b). Determinations based on World War II, Korean conflict and Vietnam era service are also subject to the presumption of aggravation under § 3.306(b) while determinations based on service on or after February 1, 1955, and before August 5, 1964, or after May 7, 1975, are subject to the presumption of aggravation under § 3.306 (a) and (c). The provisions of this paragraph are also applicable, regardless of length of service, in determining eligibility to the maximum period of entitlement based on discharge or release for a service-connected disability. (38 U.S.C. 1802, 1807, 1818).

(c) *Veterans' educational assistance.* A determination is required as to whether a veteran was discharged or released from service because of a service-connected disability (or that the official service department records show that the veteran had at time of separation from service a service-connected disability which in medical judgment would have warranted a discharge for disability) whenever a veteran applies for educational benefits under 38 U.S.C. ch. 32 or ch. 34 and is eligible for such benefits except for the 181 days active duty requirement. This determination is subject to the presumptions of incurrence under § 3.304(b) and aggravation under § 3.306 (a) and (c), based on service rendered on or after February 1, 1955 and before August 5, 1964, or after May 7, 1975, and under § 3.306(b) based on service rendered during the Vietnam era. (38 U.S.C. 1602(1)(A); 1652(a)).

[38 FR 871, Jan. 5, 1973, as amended at 41 FR 49636, Nov. 10, 1976; 42 FR 22869, May 5, 1977]

§§ 3.316–3.320 [Reserved]

CROSS REFERENCES: [1] Permanent and total disability ratings for pension purposes. See § 3.342. Special monthly dependency and indemnity compensation, death compensation and pension ratings. See § 3.351. Determination of permanent need for regular aid and attendance and "permanently bedridden." See § 3.352. Conditions which determine permanent incapacity for self-support. See § 3.356.

§ 3.321 General rating considerations.

(a) *Use of rating schedule.* The 1945 Schedule for Rating Disabilities will be used for evaluating the degree of disabilities in claims for disability compensation, disability and death pension, and in eligibility determinations. The provisions contained in the rating schedule will represent as far as can practicably be determined, the average impairment in earning capacity in civil occupations resulting from disability. (38 U.S.C. 355).

(b) *Exceptional cases*—(1) *Compensation.* Ratings shall be based as far as practicable, upon the average impairments of earning capacity with the additional proviso that the Administrator shall from time to time readjust this schedule of ratings in accordance with experience. To accord justice, therefore, to the exceptional case where the schedular evaluations are found to be inadequate, the Chief Benefits Director or the Director, Compensation and Pension Service, upon field station submission, is authorized to approve on the basis of the criteria set forth in this paragraph an extra-schedular evaluation commensurate with the average earning capacity impairment due exclusively to the service-connected disability or disabilities. The governing norm in these exceptional cases is: A finding that the case presents such an exceptional or unusual disability picture with such related factors as marked interference with employment or frequent periods of hospitalization as to render impractical the application of the regular schedular standards.

(2) *Pension.* Where the evidence of record establishes that an applicant for pension who is basically eligible

[1] 39 FR 5315, Feb. 12, 1974.

fails to meet the disability requirements based on the percentage standards of the rating schedule but is found to be unemployable by reason of his or her disability(ies), age, occupational background and other related factors, the following are authorized to approve on an extra-schedular basis a permanent and total disability rating for pension purposes: the Adjudication Officer; or where regular schedular standards are met as of the date of the rating decision, the rating board.

(3) *Effective dates.* The effective date of these extra-schedular evaluations granting or increasing benefits will be in accordance with § 3.400(b)(1) and (2) as to original and reopened claims and in accordance with § 3.400(o) in claims for increased benefits.

(c) *Advisory opinion.* Cases in which application of the schedule is not understood or the propriety of an extra-schedular rating is questionable may be submitted to Central Office for advisory opinion.

[26 FR 1583, Feb. 24, 1961, as amended at 29 FR 1463, Jan. 29, 1964; 37 FR 10442, May 23, 1972; 39 FR 5315, Feb. 12, 1974; 39 FR 32988, Sept. 13, 1974; 40 FR 57459, Dec. 10, 1975]

CROSS REFERENCES: Effective dates; disability benefits. See § 3.400(b).

Effective dates; increases. See § 3.400(o).

§ 3.322 Rating of disabilities aggravated by service.

(a) *Aggravation of preservice disability.* In cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree of disability existing at the time of entrance into active service, whether the particular condition was noted at the time of entrance into active service, or whether it is determined upon the evidence of record to have existed at that time. It is necessary to deduct from the present evaluation the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule except that if the disability is total (100 percent) no deduction will be made. If the degree of disability at the time of entrance into service is not ascertainable in terms of the schedule, no deduction will be made.

(b) *Aggravation of service-connected disability.* Where a disease or injury incurred in peacetime service is aggravated during service in a period of war, or conversely, where a disease or injury incurred in service during a period of war is aggravated during peacetime service, the entire disability flowing from the disease or injury will be service connected based on the war service.

[26 FR 1583, Feb. 24, 1961]

CROSS REFERENCES: Principles relating to service connection. See § 3.303.

Aggravation of preservice disability. See § 3.306.

§ 3.323 Combined ratings.

(a) *Compensation—(1) Same type of service.* When there are two or more service-connected compensable disabilities a combined evaluation will be made following the tables and rules prescribed in the 1945 Schedule for Rating Disabilities.

(2) *Wartime and peacetime service.* Evaluation of wartime and peacetime service-connected compensable disabilities will be combined to provide for the payment of wartime rates of compensation. (38 U.S.C. 357) Effective July 1, 1973, it is immaterial whether the disabilities are wartime or peacetime service-connected since all disabilities are compensable under 38 U.S.C. 314 and 315 on and after that date.

(b) *Pension—(1) Nonservice-connected disabilities.* Evaluation of two or more nonservice-connected disabilities not the result of the veteran's own willful misconduct or vicious habits will be combined as provided in paragraph (a)(1) of this section.

(2) *Service-connected and nonservice-connected disabilities.* Evaluations for service-connected disabilities may be combined with evaluations for disabilities not shown to be service connected and not the result of the veteran's own willful misconduct or vicious habits.

[26 FR 1583, Feb. 24, 1961, as amended at 38 FR 21923, Aug. 14, 1973]

CROSS REFERENCES: "Willful misconduct." See § 3.1(n).
Pension. See § 3.3.
Line of duty and misconduct. See § 3.301.
Service connection for mental unsoundness in suicide. See § 3.302.

§ 3.324 Multiple noncompensable service-connected disabilities.

Whenever a veteran is suffering from two or more separate permanent service-connected disabilities of such character as clearly to interfere with normal employability, even though none of the disabilities may be of compensable degree under the 1945 Schedule for Rating Disabilities the rating agency is authorized to apply a 10-percent rating, but not in combination with any other rating.

[40 FR 56435, Dec. 3, 1975]

§ 3.325 [Reserved]

§ 3.326 Examinations.

(a) Where the reasonable probability of a valid claim is indicated in any claim for disability compensation or pension, whether as an original claim, a reopened claim, or a claim for increase, including claims for benefits under the situations set forth in § 3.351 (d) and (e) and for benefits based on the need of a veteran, widow, widower, or parent for regular aid and attendance and for benefits based on a child's incapability of self-support, a Veterans Administration examination will be authorized.

(b) "Reasonable probability" may be concluded from the facts of the situation including medical and lay evidence and from the observations of the rating board made upon personal appearance by the claimant before it. The term "reasonable probability" will be interpreted liberally to permit simultaneous development of evidence including requests for examinations and for service records. The requirement of the term may be satisfied by the statement of a private physician. Evidence solely to establish permanent and total disability will not be required in claims for pension under 38 U.S.C. 521 if the veteran has attained the age of 65 years.

(c) Any hospital report and any examination report from a military hospital or from a State, county, municipal, or other government hospital or recognized private institution which indicates reasonable probability of a valid claim and which contains descriptions, including diagnoses and clinical and laboratory findings, adequate for rating purposes, of the condition of the organs and body systems for which claim is made may be deemed to be the "Veterans Administration examination", referred to in paragraph (a) of this section. However, rating action which would result in denying monetary benefits to a former prisoner of war will not be made without a complete physical examination conducted at a Veterans Administration hospital or outpatient clinic.

(d) A statement from a private physician may be accepted for rating the pension claim of a veteran, widow, or widower, a claim for aid and attendance allowance by a widow, widower, or parent, or a claim by a child based on permanent incapability of self-support, without further examination where it includes clinical manifestations and substantiation of diagnosis by findings of diagnostic techniques generally accepted by medical authorities, such as pathological studies, X-rays and laboratory tests as appropriate, and is otherwise adequate for rating purposes.

[36 FR 14467, Aug. 6, 1971, as amended at 40 FR 56435, Dec. 3, 1975]

§ 3.327 Reexaminations.

(a) *General.* Reexamination will be requested whenever evidence indicates there has been a material increase in disability since the last examination, or where the disability is likely to improve materially in the future.

(b) *Compensation cases*—(1) *Scheduling reexaminations.* It is required that at least one Veterans Administration examination be made in every case in which compensation benefits are awarded. For this purpose any hospital report and any examination report from a military hospital or from a State, county, municipal, or other government hospital or recognized private institution which contain descriptions, including diagnoses and clinical and laboratory findings, ade-

quate for rating purposes, of the condition of the organs and body systems for which claim is made may be deemed to be included in the term "Veterans Administration examination". Assignment of a prestabilization rating requires reexamination within the second 6 months period following separation from service. Following initial Veterans Administration examination, or any scheduled future or other examination, reexamination, if in order, will be scheduled within not less than 2 years nor more than 5 years within the judgment of the rating board, unless another time period is elsewhere specified.

(2) *No future examinations will be requested.* In service-connected cases, no reexamination will be scheduled: (i) When the disability is established as static; (ii) when the findings and symptoms are shown by examinations scheduled in paragraph (b)(2)(i) of this section or other examinations and hospital reports to have persisted without material improvement for a period of 5 years or more; (iii) where the disability from disease is permanent in character and of such nature that there is no likelihood of improvement; (iv) in cases of veterans over 55 years of age, except under unusual circumstances; (v) when the rating is a prescribed scheduled minimum rating; or (vi) where a combined disability evaluation would not be affected if the future examination should result in reduced evaluation for one or more conditions.

(c) *Pension cases.* In nonservice-connected cases in which the permanent total disability has been confirmed by reexamination or by the history of the case, or with obviously static disabilities, further reexaminations will not be requested. In other cases further examination will not be requested routinely and will be accomplished only if considered necessary based upon the particular facts of the individual case.

(1) However, in the cases of veterans over 55 years of age, reexamination will be requested only under unusual circumstances.

(2) In other cases further examination will not be requested routinely and will only be accomplished if considered necessary based upon the particular facts of the individual case.

(3) In cases in which the permanent total disability is confirmed by reexamination or by the history of the case, or with obviously static disabilities, further reexaminations will not be requested.

(d) *Supplementary examinations and medical opinions.* The policy as to reexaminations will not be construed as modifying in any way the right of rating agencies to request such additional medical opinions, examinations, or periods of hospital observation as may be necessary to furnish complete evidence on which rating decisions will be based.

[26 FR 1585, Feb. 24, 1961, as amended at 30 FR 11855, Sept. 16, 1965; 36 FR 14467, Aug. 6, 1971]

§ 3.328 [Reserved]

§ 3.329 Claimants required to report when requested.

Every person applying for or in receipt of compensation or pension shall submit to examinations, including periods of hospital observation, when required by the Veterans Administration under Veterans Administration regulations or other proper authority.

[26 FR 1585, Feb. 24, 1961, as amended at 30 FR 11856, Sept. 16, 1965]

CROSS REFERENCE: Failure to report for Veterans Administration examination. See § 3.655.

§ 3.330 Resumption of rating when veteran subsequently reports for Veterans Administration examination.

Such ratings will be governed by the provisions of § 3.158, "Abandoned Claims," and § 3.655, "Failure to report for Veterans Administration examination." The period following the termination or reduction for which benefits are precluded by the cited regulations will be stated in the rating. If the evidence is insufficient to evaluate disability during any period following the termination or reduction for which payments are not otherwise precluded, the rating will contain a notation reading "Evidence insufficient to evaluate from ——— to ———".

[29 FR 3623, Mar. 21, 1964]

CROSS REFERENCE: Failure to report for Veterans Administration examination. See § 3.655.

§§ 3.331-3.339 [Reserved]

§ 3.340 Total and permanent total ratings and unemployability.

(a) *Total disability ratings*—(1) *General.* Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation. Total disability may or may not be permanent. Total ratings will not be assigned, generally, for temporary exacerbations or acute infectious diseases except where specifically prescribed by the schedule.

(2) *Schedule for rating disabilities.* Total ratings are authorized for any disability or combination of disabilities for which the 1945 Schedule for Rating Disabilities prescribes a 100 percent evaluation or, with less disability, where the requirements of paragraph 16, page 5 of the rating schedule are present or where, in pension cases, the requirements of paragraph 17, page 5 of the schedule are met.

(3) *Ratings of total disability on history.* In the case of disabilities which have undergone some recent improvement, a rating of total disability may be made, provided:

(i) That the disability must in the past have been of sufficient severity to warrant a total disability rating;

(ii) That it must have required extended, continuous, or intermittent hospitalization, or have produced total industrial incapacity for at least 1 year, or be subject to recurring, severe, frequent, or prolonged exacerbations; and

(iii) That it must be the opinion of the rating agency that despite the recent improvement of the physical condition, the veteran will be unable to effect an adjustment into a substantially gainful occupation. Due consideration will be given to the frequency and duration of totally incapacitating exacerbations since incurrence of the original disease or injury, and to periods of hospitalization for treatment in determining whether the average person could have reestablished himself in a substantially gainful occupation.

(b) *Permanent total disability.* Permanence of total disability will be taken to exist when such impairment is reasonably certain to continue throughout the life of the disabled person. The permanent loss or loss of use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or bedridden constitutes permanent total disability. Diseases and injuries of long standing which are actually totally incapacitating will be regarded as permanently and totally disabling when the probability of permanent improvement under treatment is remote. Permanent total disability ratings may not be granted as a result of any incapacity from acute infectious disease, accident, or injury, unless there is present one of the recognized combinations or permanent loss of use of extremities or sight, or the person is in the strict sense permanently helpless or bedridden, or when it is reasonably certain that a subsidence of the acute or temporary symptoms will be followed by irreducible totality of disability by way of residuals. The age of the disabled person may be considered in determining permanence.

(c) *Insurance ratings.* A rating of permanent and total disability for insurance purposes will have no effect on ratings for compensation or pension.

[26 FR 1585, Feb. 24, 1961]

§ 3.341 Total disability ratings for compensation purposes.

Total compensation ratings may be assigned under the provisions of § 3.340. However, if the total rating is based on a disability or combination of disabilities for which the 1945 Schedule for Rating Disabilities provides an evaluation of less than 100 percent, it must be determined that the service-connected disabilities are sufficient to produce the unemployability without regard to advancing age.

[29 FR 3624, Mar. 21, 1964]

CROSS REFERENCE: Exceptional cases. See § 3.321(b).

§ 3.342 Permanent and total disability ratings for pension purposes.

(a) *General.* Permanent total disability ratings for pension purposes are authorized for disabling conditions not the result of the veteran's own willful misconduct or vicious habits whether or not they are service connected. However, no rating is required in claims for pension under Public Law 86-211 (73 Stat. 432) if the veteran is 65 years of age or older. In such instances permanent and total disability will be presumed. (38 U.S.C. 502(a); Pub. Law 90-77)

(b) *Criteria.* In addition to the criteria for determining total disability and permanency of total disability contained in § 3.340, the following special considerations apply in pension cases:

(1) Permanent total disability pension ratings will be authorized for congenital, developmental, hereditary or familial conditions, provided the other requirements for entitlement are met.

(2) The permanence of total disability will be established as of the earliest date consistent with the evidence in the case. Active pulmonary tuberculosis not otherwise established as permanently and totally disabling will be presumed so after 6 months' hospitalization without improvement. The same principle may be applied with other types of disabilities requiring hospitalization for indefinite periods. The need for hospitalization for periods shorter or longer than 6 months may be a proper basis for determining permanence. Where, in application of this principle, it is necessary to employ a waiting period to determine permanence of totality of disability and a report received at the end of such period shows the veteran's condition is unimproved, permanence may be established as of the date of entrance into the hospital. Similarly, when active pulmonary tuberculosis is improved after 6 months' hospitalization but still diagnosed as active after 12 months' hospitalization permanence will also be established as of the date of entrance into the hospital. In other cases the rating will be effective the date the evidence establishes permanence.

(3) Special consideration must be given the question of permanence in the case of veterans under 40 years of age. For such veterans, permanence of total disability requires a finding that the end result of treatment and adjustment to residual handicaps (rehabilitation) will be permanent disability of the required degree precluding more than marginal employment. Severe diseases and injuries, including multiple fractures or the amputation of a single extremity, should not be taken to establish permanent and total disability until it is shown that the veteran after treatment and convalescence, has been unable to secure or follow employment because of the disability and through no fault of the veteran.

(4) Employment as a member-employee or similar employment obtained only in competition with disabled persons, will not be considered as evidence of employability.

(5) The authority granted the Administrator under 38 U.S.C. 502(a)(2) to classify as permanent and total those diseases and disorders, the nature and extent of which, in his judgment, will justify such determination, will be exercised under § 3.321(b).

[26 FR 1586, Feb. 24, 1961, as amended at 26 FR 9674, Oct. 13, 1961; 29 FR 3624, Mar. 21, 1964; 32 FR 13225, Sept. 19, 1967; 39 FR 14944, Apr. 18, 1974]

§ 3.343 Continuance of total disability ratings.

(a) *General.* Total disability ratings, when warranted by the severity of the condition and not granted purely because of hospital, surgical, or home treatment, or individual unemployability will not be reduced, in the absence of clear error, without examination showing material improvement in physical or mental condition. Examination reports showing material improvement must be evaluated in conjunction with all the facts of record, and consideration must be given particularly to whether the veteran attained improvement under the ordinary conditions of life, i.e., while working or actively seeking work or wheth-

er the symptoms have been brought under control by prolonged rest, or generally, by following a regimen which precludes work, and, if the latter, reduction from total disability ratings will not be considered pending reexamination after a period of employment (3 to 6 months).

(b) *Tuberculosis; compensation.* In service-connected cases, evaluations for active or inactive tuberculosis will be governed by the Schedule for Rating Disabilities (Part 4 of this chapter). Where in the opinion of the rating board the veteran at the expiration of the period during which a total rating is provided will not be able to maintain inactivity of the disease process under the ordinary conditions of life, the case will be submitted under § 3.321.

(c) *Individual unemployability.* In reducing a rating of 100 percent service connected disability based on individual unemployability, the provisions of § 3.105(e) are for application but caution must be exercised in such a determination that actual employability is established by clear and convincing evidence. When in such a case the veteran is undergoing vocational rehabilitation, education or training, the rating will not be reduced by reason thereof unless there is received evidence of marked improvement or recovery in physical or mental conditions or of employment progress, income earned, and prospects of economic rehabilitation, which demonstrates affirmatively the veteran's capacity to pursue the vocation or occupation for which the training is intended to qualify him (or her), or unless the physical or mental demands of the course are obviously incompatible with total disability.

(d) *Change in Part 4 of this chapter.* Where a service-connected disability evaluated at 100 percent is subject to reduction as a result of a change in Part 4 of this chapter, consideration will be given to the veteran's employment status. If there is unemployability in such cases and the percentage requirements of Part 4 of this chapter are met, rating will continue at the total disability level but on the basis of unemployability.

[33 FR 16273, Nov. 6, 1968, as amended at 39 FR 14944, Apr. 29, 1974]

CROSS REFERENCE: Protection, total disability. See § 3.951.

§ 3.344 Stabilization of disability evaluations.

(a) *Examination reports indicating improvement.* Rating agencies will handle cases affected by change of medical findings or diagnosis, so as to produce the greatest degree of stability of disability evaluations consistent with the laws and Veterans Administration regulations governing disability compensation and pension. It is essential that the entire record of examinations and the medical-industrial history be reviewed to ascertain whether the recent examination is full and complete, including all special examinations indicated as a result of general examination and the entire case history. This applies to treatment of intercurrent diseases and exacerbations, including hospital reports, bedside examinations, examinations by designated physicians, and examinations in the absence of, or without taking full advantage of, laboratory facilities and the cooperation of specialists in related lines. Examinations less full and complete than those on which payments were authorized or continued will not be used as a basis of reduction. Ratings on account of diseases subject to temporary or episodic improvement, e.g., manic depressive or other psychotic reaction, epilepsy, psychoneurotic reaction, arteriosclerotic heart disease, bronchial, asthma, gastric or duodenal ulcer, many skin diseases, etc., will not be reduced on any one examination, except in those instances where all the evidence of record clearly warrants the conclusion that sustained improvement has been demonstrated. Ratings on account of diseases which become comparatively symptom free (findings absent) after prolonged rest, e.g. residuals of phlebitis, arteriosclerotic heart disease, etc., will not be reduced on examinations reflecting the results of bed rest. Moreover, though material improvement in the physical or mental condition is clearly reflected the rating agency will be considered whether the

evidence makes it reasonably certain that the improvement will be maintained under the ordinary conditions of life. When syphilis of the central nervous system or alcoholic deterioration is diagnosed following a long prior history of psychosis, psychoneurosis, epilepsy, or the like, it is rarely possible to exclude persistence, in masked form, of the preceding innocently acquired manifestations. Rating boards encountering a change of diagnosis will exercise caution in the determination as to whether a change in diagnosis represents no more than a progression of an earlier diagnosis, an error in prior diagnosis or possibly a disease entity independent of the service-connected disability. When the new diagnosis reflects mental deficiency or personality disorder only, the possibility of only temporary remission of a super-imposed psychiatric disease will be borne in mind.

(b) *Doubtful cases.* If doubt remains, after according due consideration to all the evidence developed by the several items discussed in paragraph (a) of this section, the rating agency will continue the rating in effect, citing the former diagnosis with the new diagnosis in parentheses, and following the appropriate code there will be added the reference "Rating continued pending reexamination ——— months from this date, § 3.344." The rating agency will determine on the basis of the facts in each individual case whether 18, 24 or 30 months will be allowed to elapse before the reexamination will be made.

(c) *Disabilities which are likely to improve.* The provisions of paragraphs (a) and (b) of this section apply to ratings which have continued for long periods at the same level (5 years or more). They do not apply to disabilities which have not become stabilized and are likely to improve. Reexaminations disclosing improvement, physical or mental, in these disabilities will warrant reduction in rating.

[26 FR 1586, Feb. 24, 1961]

RATINGS FOR SPECIAL PURPOSES

§ 3.350 Special monthly compensation ratings.

The rates of special monthly compensation stated in this section are those provided under 38 U.S.C. 314.

(a) *Ratings under 38 U.S.C. 314(k).* Special monthly compensation under 38 U.S.C. 314(k) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, or complete organic aphonia with constant inability to communicate by speech. This special compensation is payable in addition to the basic rate of compensation otherwise payable on the basis of degree of disability, provided that the combined rate of compensation does not exceed $1,104 monthly when authorized in conjunction with any of the provisions of 38 U.S.C. 314 (a) through (j) or (s). When there is entitlement under 38 U.S.C. 314 (l) through (n) or an intermediate rate under (p) such additional allowance is payable for each such anatomical loss or loss of use existing in addition to the requirements for the basic rates, provided the total does not exceed $1,547 per month. The limitations on the maximum compensation payable under this paragraph are independent of and do not preclude payment of additional compensation for dependents under 38 U.S.C. 315, or the special allowance for aid and attendance provided by 38 U.S.C. 314(r).

(1) *Creative organ.* (i) Loss of a creative organ will be shown by acquired absence of one or both testicles (other than undescended testicles) or ovaries or other creative organ. Loss of use of one testicle will be established when examination by a board finds that:

(*a*) The diameters of the affected testicle are reduced to one-third of the corresponding diameters of the paired normal testicle, or

(*b*) The diameters of the affected testicle are reduced to one-half or less of the corresponding normal testicle and there is alteration of consistency so that the affected testicle is consid-

erably harder or softer than the corresponding normal testicle; or

(c) If neither of the conditions (a) or (b) is met, when a biopsy, recommended by a board including a genitourologist and accepted by the veteran, establishes the absence of spermatozoa.

(ii) When loss or loss of use of a creative organ resulted from wounds or other trauma sustained in service, or resulted from operations in service for the relief of other conditions, the creative organ becoming incidentally involved, the benefit may be granted.

(iii) Loss or loss of use traceable to an elective operation performed subsequent to service, will not establish entitlement to the benefit. If, however, the operation after discharge was required for the correction of a specific injury caused by a preceding operation in service, it will support authorization of the benefit. When the existence of disability is established meeting the above requirements for nonfunctioning testicle due to operation after service, resulting in loss of use, the benefit may be granted even though the operation is one of election. An operation is not considered to be one of election where it is advised on sound medical judgment for the relief of a pathological condition or to prevent possible future pathological consequences.

(iv) Atrophy resulting from mumps followed by orchitis in service is service connected. Since atrophy is usually perceptible within 1 to 6 months after infection subsides, an examination more than 6 months after the subsidence of orchitis demonstrating a normal genitourinary system will be considered in determining rebuttal of service incurrence of atrophy later demonstrated. Mumps not followed by orchitis in service will not suffice as the antecedent cause of subsequent atrophy for the purpose of authorizing the benefit.

(2) *Foot and hand.* (i) Loss of use of a hand or a foot will be held to exist when no effective function remains other than that which would be equally well served by an amputation stump at the site of election below elbow or knee with use of a suitable prosthetic appliance. The determination will be made on the basis of the actual remaining function, whether the acts of grasping, manipulation, etc., in the case of the hand, or of balance, propulsion, etc., in the case of the foot, could be accomplished equally well by an amputation stump with prosthesis; for example:

(a) Extremely unfavorable complete ankylosis of the knee, or complete ankylosis of two major joints of an extremity, or shortening of the lower extremity of 3½ inches or more, will constitute loss of use of the hand or foot involved.

(b) Complete paralysis of the external popliteal nerve (common peroneal) and consequent footdrop, accompanied by characteristic organic changes including trophic and circulatory disturbances and other concomitants confirmatory of complete paralysis of this nerve, will be taken as loss of use of the foot.

(3) *Both buttocks.* (i) Loss of use of both buttocks shall be deemed to exist when there is severe damage by disease or injury to muscle group XVII, bilateral, (diagnostic code 5317) and additional disability rendering it impossible for the disabled person, without assistance, to rise from a seated position and from a stooped position (fingers to toes position) and to maintain postural stability (the pelvis upon head of femur). The assistance may be rendered by the person's own hands or arms, and, in the matter of postural stability, by a special appliance. (38 U.S.C. 314(k)).

(ii) Special monthly compensation for loss or loss of use of both lower extremities (38 U.S.C. 314(l) through (n)) will not preclude additional compensation under 38 U.S.C. 314(k) for loss of use of both buttocks where appropriate tests clearly substantiate that there is such additional loss.

(4) *Eye.* Loss of use or blindness of one eye, having only light perception, will be held to exist when there is inability to recognize test letters at 1 foot and when further examination of the eye reveals that perception of objects, hand movements, or counting fingers cannot be accomplished at 3 feet. Lesser extents of vision, particularly perception of objects, hand movements, or counting fingers at distances less than 3 feet is considered of negligible utility.

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(5) *Deafness.* Deafness of both ears, having absence of air and bone conduction will be held to exist where examination in a Veterans Administration authorized audiology clinic under current testing criteria shows bilateral hearing loss is equal to or greater than the minimum bilateral hearing loss required for a maximum rating evaluation under the rating schedule. (Pub. L. 88-20).

(6) *Aphonia.* Complete organic aphonia will be held to exist where there is a disability of the organs of speech which constantly precludes communication by speech. (Pub. L. 88-22).

(b) *Ratings under 38 U.S.C. 314(l).* The special monthly compensation provided by 38 U.S.C. 314(l) is payable for anatomical loss or loss of use of both hands, both feet, one hand and one foot, blindness in both eyes with visual acuity of 5/200 or less or being permanently bedridden or so helpless as to be in need of regular aid and attendance.

(1) *Extremities.* The criteria for loss and loss of use of an extremity contained in paragraph (a)(2) of this section are applicable.

(2) *Eyes, bilateral.* 5/200 visual acuity or less bilaterally qualifies for entitlement under 38 U.S.C. 314(l). However, evaluation of 5/200 based on acuity in excess of that degree but less than 10/200 (§ 4.83 of this chapter), does not qualify. Concentric contraction of the field of vision beyond 5 degrees in both eyes is the equivalent of 5/200 visual acuity.

(3) *Need for aid and attendance.* The criteria for determining that a veteran is so helpless as to be in need of regular aid and attendance are contained in § 3.352(a).

(4) *Permanently bedridden.* The criteria for rating are contained in § 3.352(a). Where possible, determinations should be on the basis of permanently bedridden rather than for need of aid and attendance (except where 38 U.S.C. 314(r) is involved) to avoid reduction during hospitalization where aid and attendance is provided in kind.

(c) *Ratings under 38 U.S.C. 314(m).* The special monthly compensation provided by 38 U.S.C. 314(m) is payable for anatomical loss or loss of use of two extremities at a level or with complications preventing natural elbow or knee action with prosthesis in place; or for blindness in both eyes having light perception; or for blindness in both eyes rendering the veteran so helpless as to be in need of regular aid and attendance.

(1) *Natural elbow or knee action.* In determining whether there is natural elbow or knee action with prosthesis in place, consideration will be based on whether use of the proper prosthetic appliance requires natural use of the joint, or whether necessary motion is otherwise controlled, so that the muscles affecting joint motion, if not already atrophied, will become so. If there is no movement in the joint, as in ankylosis or complete paralysis, use of prosthesis is not to be expected, and the determination will be as though there were one in place.

(2) *Eyes, bilateral.* With visual acuity 5/200 or less or the vision field reduced to 5 degree concentric contraction in both eyes, entitlement on account of need for regular aid and attendance will be determined on the facts in the individual case.

(d) *Ratings under 38 U.S.C. 314(n).* The special monthly compensation provided by 38 U.S.C. 314(n) is payable for the anatomical loss of two extremities so near the shoulder or hip as to prevent the use of a prosthetic appliance or anatomical loss of both eyes. Amputation is a prerequisite. If a prosthesis cannot be worn at the present level of amputation but could be applied if there were a reamputation at a higher level the requirements of this paragraph are not met; instead, consideration will be given to loss of natural elbow or knee action.

(e) *Ratings under 38 U.S.C. 314(o).* The special monthly compensation provided by 38 U.S.C. 314(o) is payable for conditions entitling to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. 314(l) through (n) or for bilateral deafness rated at 60 percent or more disabling, and the hearing impairment in one or both ears is service connected, in combination with service-connected blindness with bilateral visual acuity 5/200 or less.

(1) *Paraplegia.* Paralysis of both lower extremities together with loss of

anal and bladder sphincter control will entitle to the maximum rate under 38 U.S.C. 314(o), through the combination of loss of use of both legs and helplessness. The requirement of loss of anal and bladder sphincter control is met even though incontinence has been overcome under a strict regimen of rehabilitation of bowel and bladder training and other auxiliary measures.

(2) *Combination.* Determinations must be based upon separate and distinct disabilities. This requires, for example, that where a veteran who had suffered the loss or loss of use of two extremities is being considered for the maximum rate on account of helplessness requiring regular aid and attendance, the latter must be based on need resulting from pathology other than that of the extremities. If the loss or loss of use of two extremities or being permanently bedridden renders the person helpless, increase is not in order on account of this helplessness. Under no circumstances will the combination of "being permanently bedridden" and "being so helpless as to require regular aid and attendance" without separate and distinct anatomical loss, or loss of use, of two extremities, or blindness, be taken as entitling to the maximum benefit. The fact, however, that two separate and distinct entitling disabilities, such as anatomical loss, or loss of use of both hands and both feet, result from a common etiological agent, for example, one injury or rheumatoid arthritis, will not preclude maximum entitlement.

(3) *Helplessness.* The maximum rate, as a result of including helplessness as one of the entitling multiple disabilities, is intended to cover, in addition to obvious losses and blindness, conditions such as the loss of use of two extremities with absolute deafness and nearly total blindness or with severe multiple injuries producing total disability outside the useless extremities, these conditions being construed as loss of use of two extremities and helplessness.

(f) *Intermediate or next higher rate.* An intermediate rate authorized by this paragraph shall be established at the arithmetic mean, rounded to the nearest dollar, between the two rates concerned. (38 U.S.C. 314(p)).

(1) *Extremities.* (i) Anatomical loss or loss of use of one extremity with the anatomical loss or loss of use of another extremity at a level or with complications preventing natural elbow or knee action with prosthesis in place will entitle to the rate intermediate between 38 U.S.C. 314 (l) and (m).

(ii) Anatomical loss or loss of use of one extremity with anatomical loss of another extremity so near the shoulder or hip as to prevent the use of a prosthetic appliance will entitle to the rate equal to 38 U.S.C. 314(m).

(iii) Anatomical loss or loss of use of extremity at a level preventing natural elbow or knee action with prosthesis in place with anatomical loss of another extremity so near the shoulder or hip as to prevent the use of a prosthetic appliance will entitle to the rate intermediate between 38 U.S.C. 314 (m) and (n).

(2) *Eyes, bilateral, and blindness in connection with deafness.* (i) Blindnss of one eye with 5/200 visual acuity or less and blindness of the other eye having only light perception will entitle to the rate intermediate between 38 U.S.C. 314 (l) and (m).

(ii) Blindness of one eye with 5/200 visual acuity or less and anatomical loss, or blindness having no light perception accompanied by phthisis bulbi, evisceration or other obvious deformity or disfigurement of the other eye, will entitle to a rate equal to 38 U.S.C. 314(m).

(iii) Blindness of one eye having only light perception and anatomical loss, or blindness having no light perception accompanied by phthisis bulbi, evisceration or other obvious deformity or disfigurement of the eye, will entitle to a rate intermediate between 38 U.S.C. 314 (m) and (n).

(iv) Total blindness of both eyes having no light perception accompanied by phthisis bulbi, evisceration, or other obvious deformity or disfigurement will entitle to a rate equal to 38 U.S.C. 314(n).

(v) Blindness in both eyes rated under 38 U.S.C. 314 (l), (m), or (n), or under the intermediate or next higher

rate provisions outlined above, when accompanied by:

(*a*) Service-connected total deafness in one ear, will afford entitlement to the next higher intermediate rate or if the veteran is already entitled to an intermediate rate to the next higher statutory rate under 38 U.S.C. 314, but not higher than the (o) rate; or

(*b*) Bilateral deafness rated at no less than 40 percent, and the hearing impairment in one or both ears is service connected, will afford entitlement to the next higher statutory rate under 38 U.S.C. 314 or if the veteran is already entitled to an intermediate rate to the next higher intermediate rate, but in no event higher than the rate for (o).

(3) *Additional independent 50 percent disabilities.* In addition to the statutory rates payable under 38 U.S.C. 314 (l) through (n) and the intermediate or next higher rate provisions outlined above, additional single permanent disability or combinations of permanent disabilities independently ratable at 50 percent or more will afford entitlement to the next higher intermediate rate or if already entitled to an intermediate rate to the next higher statutory rate under 38 U.S.C. 314, but not above the (o) rate. In the application of this subparagraph the disability or disabilities independently ratable at 50 percent or more must be separate and distinct and involve different anatomical segments or bodily systems from the conditions establishing entitlement under 38 U.S.C. 314 (l) through (n) or the intermediate rate provisions outlined above. The graduated ratings for arrested tuberculosis will not be utilized in this connection, but the permanent residuals of tuberculosis may be utilized.

(4) *Additional independent 100 percent ratings.* In addition to the statutory rates payable under 38 U.S.C. 314 (l) through (n) and the intermediate or next higher rate provisions outlined above additional single permanent disability independently ratable at 100 percent apart from any consideration of individual unemployability will afford entitlement to the next higher statutory rate under 38 U.S.C. 314 or if already entitled to an intermediate rate to the next higher intermediate rate, but in no event higher than the rate for (o). In the application of this subparagraph the single permanent disability independently ratable at 100 percent must be separate and distinct and involve different anatomical segments or bodily systems from the conditions establishing entitlement under 38 U.S.C. 314 (l) through (n) or the intermediate rate provisions outlined above.

(i) Where the multiple loss or loss of use entitlement to a statutory or intermediate rate between 38 U.S.C. 314 (l) and (o) is caused by the same etiological disease or injury, that disease or injury may not serve as the basis for the independent 50 percent or 100 percent unless it is so rated without regard to the loss or loss of use.

(ii) The graduated ratings for arrested tuberculosis will not be utilized in this connection, but the permanent residuals of tuberculosis may be utilized.

(5) *Three extremities.* Anatomical loss or loss of use, or a combination of anatomical loss and loss of use, of three extremities shall entitle a veteran to the next higher rate without regard to whether that rate is a statutory rate or an intermediate rate. The maximum monthly payment under this provision may not exceed the amount stated in 38 U.S.C. 314(p).

(g) *Inactive tuberculosis (complete arrest).* The rating criteria for determining inactivity of tuberculosis are set out in § 3.375.

(1) For a veteran who was receiving or entitled to receive compensation for tuberculosis on August 19, 1968, the minimum monthly rate is $67. This minimum special monthly compensation is not to be combined with or added to any other disability compensation.

(2) For a veteran who was not receiving or entitled to receive compensation for tuberculosis on August 19, 1968, the special monthly compensation authorized by paragraph (g)(1) of this section is not payable.

(h) *Special aid and attendance benefit; 38 U.S.C. 314(r)*—(1) Maximum compensation cases. A veteran receiving the maximum rate under 38 U.S.C. 314 (o) or (p) who is in need of regular aid and attendance or a higher level of care is entitled to an additional allow-

ance during periods he or she is not hospitalized at United States Government expense. (See § 3.552(b)(2) as to continuance following admission for hospitalization.) Determination of this need is subject to the criteria of § 3.352. The regular or higher level aid and attendance allowance is payable whether or not the need for regular aid and attendance or a higher level of care was a partial basis for entitlement to the maximum rate under 38 U.S.C. 314 (o) or (p), or was based on an independent factual determination.

(2) *Entitlement to compensation at the intermediate rate between 38 U.S.C. 314 (n) and (o) plus special monthly compensation under 38 U.S.C. 314(k).* A veteran receiving compensation at the intermediate rate between 38 U.S.C. 314 (n) and (o) plus special monthly compensation under 38 U.S.C. 314(k) who establishes a factual need for regular aid and attendance or a higher level of care, is also entitled to an additional allowance during periods he or she is not hospitalized at United States Government expense. (See § 3.552(b)(2) as to continuance following admission for hospitalization.) Determination of the factual need for aid and attendance is subject to the criteria of § 3.352:

(3) *Amount of the allowance.* The amount of the additional allowance payable to a veteran in need of regular aid and attendance is specified in 38 U.S.C. 314(r)(1). The amount of the additional allowance payable to a veteran in need of a higher level of care is specified in 38 U.S.C. 314(r)(2). The higher level aid and attendance allowance authorized by 38 U.S.C. 314(r)(2) is payable in lieu of the regular aid and attendance allowance authorized by 38 U.S.C. 314(r)(1).

(i) *Total plus 60 percent, or housebound; 38 U.S.C. 314(s).* The special monthly compensation provided by 38 U.S.C. 314(s) is payable where the veteran has a single service-connected disability rated as 100 percent without resort to individual unemployability and,

(1) Has additional service-connected disability or disabilities independently ratable at 60 percent, separate and distinct from the 100 percent service-connected disability and involving different anatomical segments or bodily systems, or

(2) Is permanently housebound by reason of service-connected disability or disabilities. This requirement is met when the veteran is substantially confined as a direct result of service-connected disabilities to his or her dwelling and the immediate premises or, if institutionalized, to the ward or clinical areas, and it is reasonably certain that the disability or disabilities and resultant confinement will continue throughout his or her lifetime.

[26 FR 1587, Feb. 24, 1961, as amended at 27 FR 4739, May 18, 1962; 28 FR 1587, Feb. 20, 1963; 28 FR 5671, June 11, 1963; 33 FR 16273, Nov. 6, 1968; 39 FR 34531, Sept. 26, 1974; 40 FR 54245, Nov. 21, 1975; 41 FR 55873, Dec. 23, 1976; 43 FR 14017, Apr. 4, 1978; 44 FR 22719, Apr. 17, 1979; 45 FR 25392, Apr. 15, 1980]

§ 3.351 Special monthly dependency and indemnity compensation, death compensation, pension and spouse's compensation ratings.

(a) *General.* This section sets forth criteria for determining whether:

(1) Increased pension is payable to a veteran by reason of need for aid and attendance or by reason of being housebound. (38 U.S.C. 521(d), (e)).

(2) Increased compensation is payable to a veteran by reason of the veteran's spouse being in need of aid and attendance. (38 U.S.C. 315(1)(I)).

(3) Increased dependency and indemnity compensation is payable to a surviving spouse or parent by reason of being in need of aid and attendance. (38 U.S.C. 411(c), 415(h)).

(4) Increased dependency and indemnity compensation is payable to a surviving spouse who is not in need of aid and attendance but is housebound. (38 U.S.C. 411(d)).

(5) Increased pension is payable to a surviving spouse by reason of need for aid and attendance, or if not in need of aid and attendance, by reason of being housebound. (38 U.S.C. 541(d), (e)).

(6) Increased death compensation is payable to a surviving spouse by reason of being in need of aid and attendance. (38 U.S.C. 322).

(b) *Aid and attendance; need.* Need for aid and attendance means helplessness or being so nearly helpless as to

require the regular aid and attendance of another person. The criteria set forth in paragraph (c) of this section will be applied in determining whether such need exists.

(c) *Aid and attendance; criteria.* The veteran, spouse, surviving spouse or parent will be considered in need of regular aid and attendance if he or she:

(1) Is blind or so nearly blind as to have corrected visual acuity of 5/200 or less, in both eyes, or concentric contraction of the visual field to 5 degrees or less; or

(2) Is a patient in a nursing home because of mental or physical incapacity; or

(3) Establishes a factual need for aid and attendance under the criteria set forth in § 3.352(a). (38 U.S.C. 502(b)).

(d) *Housebound, or permanent and total plus 60 percent; disability pension.* The rate of pension payable to a veteran who is entitled to pension under 38 U.S.C. 521 and who is not in need of regular aid and attendance shall be as prescribed in 38 U.S.C. 521(e) if, in addition to having a single permanent disability rated 100 percent disabling under the Schedule for Rating Disabilities (not including ratings based upon unemployability under § 4.17 of this chapter) the veteran:

(1) Has additional disability or disabilities independently ratable at 60 percent or more, separate and distinct from the permanent disability rated as 100 percent disabling and involving different anatomical segments or bodily systems, or

(2) Is "permanently housebound" by reason of disability or disabilities. This requirement is met when the veteran is substantially confined to his or her dwelling and the immediate premises or, if institutionalized, to the ward or clinical area, and it is reasonably certain that the disability or disabilities and resultant confinement will continue throughout his or her lifetime. (38 U.S.C. 502(c), 521(e)).

(e) *Housebound; dependency and indemnity compensation.* The monthly rate of dependency and indemnity compensation payable to a surviving spouse who does not qualify for increased dependency and indemnity compensation under 38 U.S.C. 411(c) based on need for regular aid and attendance shall be increased by the amount specified in 38 U.S.C. 411(d) if the surviving spouse is permanently housebound by reason of disability. The "permanently housebound" requirement is met when the surviving spouse is substantially confined to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse's lifetime. (38 U.S.C. 411(d)).

(f) *Housebound; improved pension; death.* The annual rate of death pension payable to a surviving spouse who does not qualify for an annual rate of death pension payable under § 3.23(a)(6) based on need for aid and attendance shall be as set forth in § 3.23(a)(7) if the surviving spouse is permanently housebound by reason of disability. The "permanently housebound" requirement is met when the surviving spouse is substantially confined to his or her home (ward or clinical areas, if institutionalized) or immediate premises by reason of disability or disabilities which it is reasonably certain will remain throughout the surviving spouse's lifetime. (38 U.S.C. 541(e)).

[44 FR 45939, Aug. 6, 1979]

§ 3.352 Criteria for permanent need for aid and attendance and "permanently bedridden."

(a) *Basic criteria for regular aid and attendance and permanently bedridden.* The following will be accorded consideration in determining the need for regular aid and attendance (§ 3.351(c)(3): inability of claimant to dress or undress himself (herself), or to keep himself (herself) ordinarily clean and presentable; frequent need of adjustment of any special prosthetic or orthopedic applicances which by reason of the particular disability cannot be done without aid (this will not include the adjustment of appliances which normal persons would be unable to adjust without aid, such as supports, belts, lacing at the back, etc.); inability of claimant to feed himself (herself) through loss of coordina-

tion of upper extremities or through extreme weakness; inability to attend to the wants of nature; or incapacity, physical or mental, which requires care or assistance on a regular basis to protect the claimant from hazards or dangers incident to his or her daily environment. "Bedridden" will be a proper basis for the determination. For the purpose of this paragraph "bedridden" will be that condition which, through its essential character, actually requires that the claimant remain in bed. The fact that claimant has voluntarily taken to bed or that a physician has prescribed rest in bed for the greater or lesser part of the day to promote convalescence or cure will not suffice. It is not required that all of the disabling conditions enumerated in this paragraph be found to exist before a favorable rating may be made. The particular personal functions which the veteran is unable to perform should be considered in connection with his or her condition as a whole. It is only necessary that the evidence establish that the veteran is so helpless as to need regular aid and attendance, not that there be a constant need. Determinations that the veteran is so helpless, as to be in need of regular aid and attendance will not be based solely upon an opinion that the claimant's condition is such as would require him or her to be in bed. They must be based on the actual requirement of personal assistance from others.

(b) *Basic criteria for the higher level aid and attendance allowance.* (1) A veteran is entitled to the higher level aid and attendance allowance authorized by § 3.350(h) in lieu of the regular aid and attendance allowance when all of the following conditions are met:

(i) The veteran is entitled to the compensation authorized under 38 U.S.C. 314(o), or the maximum rate of compensation authorized under 38 U.S.C. 314(p).

(ii) The veteran meets the requirements for entitlement to the regular aid and attendance allowance in paragraph (a) of this section.

(iii) The veteran needs a "higher level of care" (as defined in paragraph (b)(2) of this section) than is required to establish entitlement to the regular aid and attendance allowance, and in the absence of the provision of such higher level of care the veteran would require hospitalization, nursing home care, or other residential institutional care.

(iv) The veteran's need for a higher level of care than is required to establish entitlement to the regular aid and attendance allowance is determined by a Veterans Administration physician or, in areas where no Veterans Administration physician is available, by a physician carrying out such function under contract or fee arrangement based on an examination by such physician.

(2) Need for a higher level of care shall be considered to be need for personal health-care services provided on a daily basis in the veteran's home by a person who is licensed to provide such services or who provides such services under the regular supervision of a licensed health-care professional. Personal health-care services include (but are not limited to) such services as physical therapy, administration of injections, placement of indwelling catheters, and the changing of sterile dressings, or like functions which require professional health-care training or the regular supervision of a trained health-care professional to perform. A licensed health-care professional includes (but is not limited to) a doctor of medicine or osteopathy, a registered nurse, a licensed practical nurse, or a physical therapist licensed to practice by a State or political subdivision thereof.

(3) The term "under the regular supervision of a licensed health-care professional", as used in paragraph (b)(2) of this section, means that an unlicensed person performing personal health-care services is following a regimen of personal health-care services prescribed by a health-care professional, and that the health-care professional consults with the unlicensed person providing the health-care services at least once each month to monitor the prescribed regimen. The consultation need not be in person; a telephone call will suffice.

(4) A person performing personal health-care services who is a relative or other member of the veteran's

household is not exempted from the requirement that he or she be a licensed health-care professional or be providing such care under the regular supervision of a licensed health-care professional.

(5) The provisions of paragraph (b) of this section are to be strictly construed. The higher level aid-and-attendance allowance is to be granted only when the veteran's need is clearly established and the amount of services required by the veteran on a daily basis is substantial. (38 U.S.C. 210(c), 314(r)(2)).

(c) *Attendance by relative.* The performance of the necessary aid and attendance service by a relative of the beneficiary or other member of his or her household will not prevent the granting of the additional allowance.

[41 FR 29680, July 19, 1976, as amended at 44 FR 22720, Apr. 17, 1979]

§ 3.353 Determinations of incompetency and competency.

(a) *Definition of mental incompetency.* A mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.

(b) *Authority.* Rating agencies are authorized to make official determinations of competency and incompetency for the purpose of existing laws, Veterans Administration regulations and Veterans Administration instructions. Such determinations will be controlling for purposes of insurance (38 U.S.C. 722), the discontinuance and payment of amounts withheld because of an estate in excess of $1,500 (§ 3.557(b), and subject to § 13.56 of this chapter, direct payment of current benefits. Where the beneficiary is rated incompetent the Veterans Services Officer of jurisdiction will be informed of the possible necessity for the appointment or recognition of a fiduciary. The Veterans Services Officer will develop information as to the beneficiary's social, economic and industrial adjustment. If the Veterans Services Officer upon review of this evidence concurs in the rating of incompetency he or she will proceed to effect the appointment of a fiduciary, or in the case of a married beneficiary, to recommend release of payments to the beneficiary's spouse as provided in § 13.57 of this chapter, or recommend payment in accordance with § 13.56 of this chapter. The recommendation will be effectuated. If the Veterans Services Officer is of the opinion that the beneficiary is capable of administering the funds payable without limitation, the evidence on which that opinion is based will be referred to the rating agency with a statement as to his or her conclusion. The rating agency will consider this evidence together with all other evidence of record in determining whether its prior decision should be revised or continued. Reexamination may be requested as provided in § 3.327(d) if necessary to properly evaluate the extent of disability.

(c) *Medical opinion.* Unless the medical evidence is clear, convincing and leaves no doubt as to the person's incompetency, the rating agency will make no determination of incompetency without a definite expression regarding the question by the responsible medical authorities. Considerations of medical opinions will be in accordance with the principles in paragraph (a) of this section. Determinations relative to incompetency should be based upon all evidence of record and there should be a consistent relationship between the percentage of disability, facts relating to commitment or hospitalization and the holding of incompetency.

(d) *Presumption in favor of competency.* Where there is doubt as to whether the beneficiary is capable of administering his or her funds such doubt will be resolved in favor of competency.

(e) *Due process.* Whenever it is proposed to make an incompetency determination, the beneficiary will be notified of the proposed action and of the right to a hearing as provided in § 3.103. Such notice is not necessary if the beneficiary has been declared incompetent by a court of competent jurisdiction or if a guardian has been appointed for the beneficiary based upon a court finding of incompetency. If a hearing is requested it must be held prior to a rating decision of incompe-

tency. Failure or refusal of the beneficiary after proper notice to request or cooperate in such a hearing will not preclude a rating decision based on the evidence of record.

[36 FR 19020, Sept. 25, 1971, and 40 FR 1241, Jan. 7, 1975, as amended at 42 FR 2069, Jan. 10, 1977]

§ 3.354 Determinations of insanity.

(a) *Definition of insanity.* An insane person is one who, while not mentally defective or constitutionally psychopathic, except when a psychosis has been engrafted upon such basic condition, exhibits, due to disease, a more or less prolonged deviation from his normal method of behavior; or who interferes with the peace of society; or who has so departed (become antisocial) from the accepted standards of the community to which by birth and education he belongs as to lack the adaptability to make further adjustment to the social customs of the community in which he resides.

(b) *Insanity causing discharge.* When a rating agency is concerned with determining whether a veteran was insane at the time he committed an offense leading to his court-martial, discharge or resignation (38 U.S.C. 3103(b)), it will base its decision on all the evidence procurable relating to the period involved, and apply the definition in paragraph (a) of this section.

[26 FR 1589, Feb. 24, 1961]

§ 3.355 Testamentary capacity for insurance purposes.

When cases are referred to a rating agency involving the testamentary capacity of the insured to execute designations or changes of beneficiary, or designations or changes of option, the following considerations will apply:

(a) Testamentary capacity is that degree of mental capacity necessary to enable a person to perform a testamentary act. This, in general, requires that the testator reasonably comprehend the nature and significance of his act, that is, the subject and extent of his disposition, recognition of the object of his bounty, and appreciation of the consequence of his act, uninfluenced by any material delusion as to the property or persons involved.

(b) Due consideration should be given to all facts of record, with emphasis being placed on those facts bearing upon the mental condition of the testator (insured) at the time or nearest the time he executed the designation or change. In this connection, consideration should be given to lay as well as medical evidence.

(c) Lack of testamentary capacity should not be confused with insanity or mental incompetence. An insane person might have a lucid interval during which he would possess testamentary capacity. On the other hand, a sane person might suffer a temporary mental aberration during which he would not possess testamentary capacity. There is a general but rebuttable presumption that every testator possesses testamentary capacity. Therefore, reasonable doubts should be resolved in favor of testamentary capacity.

[26 FR 1590, Feb. 24, 1961]

§ 3.356 Conditions which determine permanent incapacity for self-support.

(a) *Basic determinations.* A child must be shown to be permanently incapable of self-support by reason of mental or physical defect at the date of attaining the age of 18 years.

(b) *Rating criteria.* Rating determinations will be made solely on the basis of whether the child is permanently incapable of self-support through his own efforts by reason of physical or mental defects. The question of permanent incapacity for self-support is one of fact for determination by the rating agency on competent evidence of record in the individual case. Rating criteria applicable to disabled veterans are not controlling. Principal factors for consideration are:

(1) The fact that a claimant is earning his or her own support is prima facie evidence that he or she is not incapable of self-support. Incapacity for self-support will not be considered to exist when the child by his or her own efforts is provided with sufficient income for his or her reasonable support.

(2) A child shown by proper evidence to have been permanently incapable of self-support prior to the date of at-

taining the age of 18 years, may be so held at a later date even though there may have been a short intervening period or periods when his or her condition was such that he or she was employed, provided the cause of incapacity is the same as that upon which the original determination was made and there were no intervening diseases or injuries that could be considered as major factors. Employment which was only casual, intermittent, tryout, unsuccessful, or terminated after a short period by reason of disability, should not be considered as rebutting permanent incapability of self-support otherwise established.

(3) It should be borne in mind that employment of a child prior or subsequent to the delimiting age may or may not be a normal situation, depending on the educational progress of the child, the economic situation of the family, indulgent attitude of parents, and the like. In those cases where the extent and nature of disability raises some doubt as to whether they would render the average person incapable of self-support, factors other than employment are for consideration. In such cases there should be considered whether the daily activities of the child in the home and community are equivalent to the activities of employment of any nature within the physical or mental capacity of the child which would provide sufficient income for reasonable support. Lack of employment of the child either prior to the delimiting age or thereafter should not be considered as a major factor in the determination to be made, unless it is shown that it was due to physical or mental defect and not to mere disinclination to work or indulgence of relatives or friends.

(4) The capacity of a child for self-support is not determinable upon employment afforded solely upon sympathetic or charitable considerations and which involved no actual or substantial rendition of services.

[26 FR 1590, Feb. 24, 1961, as amended at 38 FR 871, Jan. 5, 1973]

CROSS REFERENCE: Basic pension and eligibility determinations. See § 3.314.

§ 3.357 Rating of noncompensable disabilities.

(a) *General.* In every instance where the minimum schedular evaluation requires residuals and the schedule does not provide a no-percent evaluation, a no-percent evaluation will be assigned when the required residuals are not shown.

(b) *Civil service preference ratings.* For the purpose of civil service disability preference certifications, an evaluation of less than 10 percent may be made. Except for disabilities incurred in combat, some extent of service-connected disability is required. In considering a less than 10-percent rating, any directly or presumptively service-connected disease or injury will be held to exist to the extent required if it is manifested by a symptom or other identifiable residual.

[26 FR 1590, Feb. 24, 1961, as amended at 30 FR 3881, Mar. 25, 1965]

§ 3.358 Determinations for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

(a) *General.* Where it is determined that there is additional disability resulting from a disease or injury or an aggravation of an existing disease or injury suffered as a result of training, hospitalization, medical or surgical treatment, or examination, compensation will be payable for such additional disability. (38 U.S.C. 351).

(b) *Additional disability.* In determining that additional disability exists, the following considerations will govern:

(1) The beneficiary's physical condition immediately prior to the disease or injury on which the claim for compensation is based will be compared with the subsequent physical condition resulting from the disease or injury, each body part involved being considered separately.

(i) As applied to examinations, the physical condition prior to the disease or injury will be the condition at time of beginning the physical examination as a result of which the disease or injury was sustained.

(ii) As applied to medical or surgical treatment, the physical condition prior to the disease or injury will be the condition which the specific medical or surgical treatment was designed to relieve.

(2) Compensation will not be payable under 38 U.S.C. 351 for the continuance or natural progress of disease or injuries for which the training, or hospitalization, etc., was authorized.

(c) *Cause.* In determining whether such additional disability resulted from a disease or an injury or an aggravation of an existing disease or injury suffered as a result of training, hospitalization, medical or surgical treatment, or examination, the following considerations will govern:

(1) It will be necessary to show that the additional disability is actually the result of such disease or injury or an aggravation of an existing disease or injury and not merely coincidental therewith.

(2) The mere fact that aggravation occurred will not suffice to make the additional disability compensable in the absence of proof that it resulted from disease or injury or an aggravation of an existing disease or injury suffered as the result of training, hospitalization, medical or surgical treatment, or examination.

(3) Compensation is not payable for either the contemplated or foreseeable after results of approved medical or surgical care properly administered, no matter how remote, in the absence of a showing that additional disability or death proximately resulted through carelessness, negligence, lack of proper skill, error in judgment, or similar instances of indicated fault on the part of the Veterans' Administration. However, compensation is payable in the event of the occurrence of an "accident" (an unforeseen, untoward event), causing additional disability or death proximately resulting from Veterans' Administration hospitalization or medical or surgical care.

(4) If the disability resulted from transportation while in a hospitalized status, compensation will be payable only where the injury or death proximately resulted from the carelessness, negligence, lack of proper skill, error in judgement, or similar instances of indicated fault on the part of the Veterans Administration, or an employee of the Veterans Administration.

(5) When the proximate cause of the injury suffered was the claimant's willful misconduct or failure to follow instructions, it will bar him (or her) from receipt of compensation hereunder except in the case of incompetent claimants.

(6) Compensation for disability resulting from the pursuit of vocational rehabilitation is not payable unless there is established a direct (proximate) causal connection between the injury or aggravation of an existing injury and some essential activity or function which is within the scope of the vocational rehabilitation course, not necessarily limited to activities or functions specifically designated by the Veterans Administration in the individual case, since ordinarily it is not to be expected that each and every different function and act of a veteran pursuant to his or her course of training will be particularly specified in the outline of the course or training program. For example, a disability resulting from the use of an item of mechanical or other equipment is within the purview of the statute if training in its use is implicit within the prescribed program or course outlined or if its use is implicit in the performance of some task or operation the trainee must learn to perform, although such use may not be especially mentioned in the training program. In determining whether the element of direct or proximate causation is present, it remains necessary for a distinction to be made between an injury arising out of an act performed in pursuance of the course of training, that is, a required "learning activity", and one arising out of an activity which is incident to, related to, or coexistent with the pursuit of the program of training. For a case to fall within the statute there must have been sustained an injury which, but for the performance of a "learning activity" in the prescribed course of training, would not have been sustained. A meticulous examination into all the circumstances is required, including a consideration of the time and place of the incident producing the injury.

(7) Nursing home care furnished under section 620 of title 38, United States Code is not hospitalization within the meaning of this section. Such a nursing home is an independent contractor and, accordingly, its agents and employees are not to be deemed agents and employees of the Veterans Administration. If additional disability results from medical or surgical treatment or examination through negligence or other wrongful act or omission on the part of such a nursing home, its employees or agents, entitlement does not exist under this section unless there was concurring negligence or wrongful act or omission on the part of the Veterans Administration and such acts on the part of both were the proximate cause of the additional disability.

[26 FR 1590, Feb. 24, 1961, as amended at 36 FR 7659, Apr. 23, 1971; 39 FR 34531, Sept. 26, 1974; 43 FR 51015, Nov. 2, 1978]

§ 3.359 Determination of service connection for former members of the armed forces of Czechoslovakia or Poland.

Rating boards will determine whether or not the condition for which treatment is claimed by former members of the Armed Forces of Czechoslovakia or Poland under 38 U.S.C. 109(c) is service connected. This determination will be made using the same criteria that applies to determinations of service connection based on service in the Armed Forces of the United States.

[43 FR 4424, Feb. 2, 1978]

§ 3.360 Service-connected health-care eligibility of certain persons administratively discharged under other than honorable condition.

(a) *General.* The health-care and related benefits authorized by chapter 17 of title 38, United States Code shall be provided to certain former service persons with administrative discharges under other than honorable conditions for any disability incurred or aggravated during active military, naval, or air service in line of duty.

(b) *Discharge categorization.* With certain exceptions such benefits shall be furnished for any disability incurred or aggravated during a period of service terminated by a discharge under other than honorable conditions. Specifically, they may not be furnished for any disability incurred or aggravated during a period of service terminated by a bad conduct discharge or when one of the bars listed in § 3.12(c) applies.

(c) *Eligibility criteria.* In making determinations of health-care eligibility the same criteria will be used as is now applicable to determinations of service incurrence and in line of duty when there is no character of discharge bar.

[43 FR 15154, Apr. 11, 1978]

Rating Considerations Relative to Specific Diseases

§ 3.370 Pulmonary tuberculosis shown by X-ray in active service.

(a) *Active disease.* X-ray evidence alone may be adequate for grant of direct service connection for pulmonary tuberculosis. When under consideration, all available service department films and subsequent films will be secured and read by specialists at designated stations who should have a current examination report and X-ray. Resulting interpretations of service films will be accorded the same consideration for service-connection purposes as if clinically established, however, a compensable rating will not be assigned prior to establishment of an active condition by approved methods.

(b) *Inactive disease.* Where the veteran was examined at time of entrance into active service but X-ray was not made, or if made, is not available and there was no notation or other evidence of active or inactive reinfection type pulmonary tuberculosis existing prior to such entrance, it will be assumed that the condition occurred during service and direct service connection will be in order for inactive pulmonary tuberculosis shown by X-ray evidence during service in the manner prescribed in paragraph (a) of this section, unless lesions are first shown so soon after entry on active service as to compel the conclusion, on the basis of sound medical principles, that they existed prior to entry on active service.

(c) *Primary lesions.* Healed primary type tuberculosis shown at the time of entrance into active service will not be taken as evidence to rebut direct or presumptive service connection for active reinfection type pulmonary tuberculosis.

[26 FR 1591, Feb. 24, 1961, as amended at 43 FR 45347, Oct. 2, 1978]

§ 3.371 Presumptive service connection for tuberculous disease; wartime and service on or after January 1, 1947.

(a) *Pulmonary tuberculosis.* (1) Evidence of activity on comparative study of X-ray films showing pulmonary tuberculosis within the 3-year presumptive period provided by § 3.307(a)(3) will be taken as establishing service connection for active pulmonary tuberculosis subsequently diagnosed by approved methods but service connection and evaluation may be assigned only from the date of such diagnosis or other evidence of clinical activity.

(2) A notation of inactive tuberculosis of the reinfection type at induction or enlistment definitely prevents the grant of service connection under § 3.307 for active tuberculosis, regardless of the fact that it was shown within the appropriate presumptive period.

(b) *Pleurisy with effusion without obvious cause.* Pleurisy with effusion with evidence of diagnostic studies ruling out obvious nontuberculous causes will qualify as active tuberculosis. The requirements for presumptive service connection will be the same as those for tuberculous pleurisy.

(c) *Tuberculous pleurisy and endobronchial tuberculosis.* Tuberculous pleurisy and endobronchial tuberculosis fall within the category of pulmonary tuberculosis for the purpose of service connection on a presumptive basis. Either will be held incurred in service when initially manifested within 36 months after the veteran's separation from service as determined under § 3.307(a)(2).

(d) *Military tuberculosis.* Service connection for military tuberculosis involving the lungs is to be determined in the same manner as for other active pulmonary tuberculosis.

[26 FR 1591, Feb. 24, 1961, as amended at 27 FR 6387, July 6, 1962; 31 FR 4681, Mar. 19, 1966; 39 FR 34532, Sept. 26, 1974; 43 FR 45347, Oct. 2, 1978]

§ 3.372 Initial grant following inactivity of tuberculosis.

When service connection is granted initially on an original or reopened claim for pulmonary or nonpulmonary tuberculosis and there is satisfactory evidence that the condition was active previously but is now inactive (arrested), it will be presumed that the disease continued to be active for 1 year after the last date of established activity, provided there is no evidence to establish activity or inactivity in the intervening period. For a veteran entitled to receive compensation on August 19, 1968, the beginning date of graduated ratings will commence at the end of the 1-year period. For a veteran who was not receiving or entitled to receive compensation on August 19, 1968, ratings will be assigned in accordance with the Schedule for Rating Disabilities (Part 4 of this chapter). This section is not applicable to running award cases.

[33 FR 16275, Nov. 6, 1968]

§ 3.373 [Reserved]

§ 3.374 Effect of diagnosis of active tuberculosis.

(a) *Service diagnosis.* Service department diagnosis of active pulmonary tuberculosis will be accepted unless a board of medical examiners, Clinic Director or Chief, Outpatient Service certifies, after considering all the evidence, including the favoring or opposing tuberculosis and activity, that such diagnosis was incorrect. Doubtful cases may be referred to the Chief Medical Director in Central Office.

(b) *Veterans Administration diagnosis.* Diagnosis of active pulmonary tuberculosis by the medical authorities of the Veterans Administration as the result of examination, observation, or treatment will be accepted for rating purposes. Reference to the Clinic Director or Chief, Outpatient Service will be in order in questionable cases and, if necessary, to the Chief Medical Director in Central Office.

(c) *Private physician's diagnosis.* Diagnosis of active pulmonary tuberculosis by private physicians on the basis of their examination, observation or treatment will not be accepted to show the disease was initially manifested after discharge from active service unless confirmed by acceptable clinical, X-ray or laboratory studies, or by findings of active tuberculosis based upon acceptable hospital observation or treatment.

[26 FR 1591, Feb. 24, 1961, as amended at 27 FR 6387, July 6, 1962; 33 FR 16275, Nov. 6, 1968; 43 FR 45348, Oct. 2, 1978]

§ 3.375 Determination of inactivity (complete arrest) in tuberculosis.

(a) *Pulmonary tuberculosis.* A veteran shown to have had pulmonary tuberculosis will be held to have reached a condition of "complete arrest" when a diagnosis of inactive is made.

(b) *Nonpulmonary disease.* Determination of complete arrest of nonpulmonary tuberculosis requires absence of evidence of activity for 6 months. If there are two or more foci of such tuberculosis, one of which is active, the condition will not be considered to be inactive until the tuberculous process has reached arrest in its entirety.

(c) *Arrest following surgery.* Where there has been surgical excision of the lesion or organ, the date of complete arrest will be the date of discharge from the hospital, or 6 months from the date of excision, whichever is later.

[33 FR 16275, Nov. 6, 1968, as amended at 43 FR 45348, Oct. 2, 1978]

§§ 3.376—3.377 [Reserved]

§ 3.378 Changes from activity in pulmonary tuberculosis pension cases.

A permanent and total disability rating in effect during hospitalization will not be discontinued before hospital discharge on the basis of a change in classification from active. At hospital discharge, the permanent and total rating will be discontinued unless (a) the medical evidence does not support a finding of complete arrest (§ 3.375), or (b) where complete arrest is shown but the medical authorities recommend that employment not be resumed or be resumed only for short hours (not more than 4 hours a day for a 5-day week). If either of the two aforementioned conditions is met, discontinuance will be deferred pending examination in 6 months. Although complete arrest may be established upon that examination, the permanent and total rating may be extended for a further period of 6 months provided the veteran's employment is limited to short hours as recommended by the medical authorities (not more than 4 hours a day for a 5-day week). Similar extensions may be granted under the same conditions at the end of 12 and 18 months periods. At the expiration of 24 months after hospitalization, the case will be considered under § 3.321(b) if continued short hours of employment is recommended or if other evidence warrants submission.

[43 FR 45348, Oct. 2, 1978]

§ 3.379 Anterior poliomyelitis.

If the first manifestations of acute anterior poliomyelitis present themselves in a veteran within 35 days of termination of active military service, it is probable that the infection occurred during service. If they first appear after this period, it is probable that the infection was incurred after service.

[26 FR 1592, Feb. 24, 1961]

§ 3.380 Diseases of allergic etiology.

Diseases of allergic etiology, including bronchial asthma and urticaria, may not be disposed of routinely for compensation purposes as constitutional or developmental abnormalities. Service connection must be determined on the evidence as to existence prior to enlistment and, if so existent, a comparative study must be made of its severity at enlistment and subsequently. Increase in the degree of disability during service may not be disposed of routinely as natural progress nor as due to the inherent nature of the disease. Seasonal and other acute allergic manifestations subsiding on the absence of or removal of the allergen are generally to be regarded as acute diseases, healing without residuals. The determination as to service in-

currence or aggravation must be on the whole evidentiary showing.

[26 FR 1592, Feb. 24, 1961]

§ 3.381 Determination of service connection for dental disabilities.

(a) *General.* Service connection for dental conditions will not be considered as having been established when the evidence clearly shows that the disabilities existed or were recorded at the time of enlistment, subject to the provisions of paragraph (b) of this section or originated subsequent to discharge from causes not related to service. Each missing or defective tooth and each disease of the investing tissues will be considered separately, and service connection will be granted for disease or injury of individual teeth and of the investing tissues, shown by the evidence to have been incurred in or aggravated by service.

(b) *Treatment in service.* The furnishing of treatment or prosthesis for noncompensable dental conditions during service will not be considered per se as aggravation of a dental condition shown to have existed prior to entrance into active service. Teeth noted at entry into active service as carious restorable will not be held as service connected, either direct or by aggravation, notwithstanding enlargement of the original cavity or development of additional cavitation on the same or another surface; nor on the basis of the insertion of a filling during service, unless new caries develop after expiration of a reasonable time after the original cavity has been filled, amelioration rather than worsening or aggravation ensuing in such cases. Service connection by aggravation will be conceded in such teeth, carious restorable at entry into service, whether or not filled, but which necessitate extraction after the expiration of a reasonable time after entry into active service. A filling recorded at induction followed by a reasonable period of service and extraction or replacement because of new caries will entitle the veteran to a finding of direct service connection for the new condition. Likewise, aggravation is allowed where pyorrhea is noted at enlistment but after reasonable service necessitates extraction of a tooth or teeth during service. Conversely, service connection by aggravation will not be conceded if the tooth at enlistment was classified as defective but was not restorable.

(c) *Associated diseases.* Effective principles relating to the establishment of service connection for dental diseases and injuries by reason of their relationship to other associated service-connected diseases or injuries will be observed in the adjudication of claims based upon dental conditions where a determination to that effect is properly in order.

(d) *Presumption of soundness.* The statutory presumptions as to soundness of condition at time of entrance into active service will not be applicable, in cases of dental conditions not disabling to a compensable degree.

(e) *Combat, trauma, prisoner-of-war status.* As to each noncompensable service-connected dental condition, a determination will be made as to whether it was due to combat wound or other service trauma. Where service connection is granted for noncompensable dental conditions, it will be determined whether the veteran involved was a prisoner of war, but not which of such conditions are attributable to the prisoner-of-war experience. (38 U.S.C. 612(b)(3)).

[26 FR 1592, Feb. 24, 1961]

§ 3.382 Evidence to establish service connection for dental disabilities.

(a) *Requirements.* Service connection for dental disabilities will be established by service records, documentary evidence in the form of reports of examinations (dental or physical), duly certified statements of dentists or physicians, or certified statements of fact from two or more disinterested parties. The disability must be shown to have been incurred in or aggravated by service as provided in this section. Statements certified by dentists or physicians must give the claimant's full name, the date he or she was first examined or treated, the date of subsequent treatments, if any, and contain a complete and detailed statement of the symptoms observed and diagnosis made. The name or number of all defective or missing teeth noted and the character and extent of any

pathological condition of the investing tissues observed should be included. If exact dates cannot be given, an approximate date may be used. Certified statements from disinterested parties must show the circumstances under which knowledge of the claimant's disability was obtained and as far as possible describe the symptoms and location of the disability observed.

(b) *Exceptional case.* Where after all sources of information have been exhausted and all variations in the records reconciled, there remains notation of filled teeth at time of release from active service and there was no notation of these teeth as defective or filled at entrance into service, service connection may be granted in exceptional cases for such teeth, notwithstanding there is no record of treatment during service, if the veteran alleges treatment in service, giving the time and place of treatment, and the conditions and circumstances of his or her service support his or her allegation, and inception in service is consistent with sound dental judgment. Exceptional cases contemplated in this category are where the veteran had a considerable period of service, particularly in a combat area where records of treatment may not always have been recorded due to the stress and strain encountered under battle conditions or where extenuating circumstances are shown in those instances where the veteran served in this country or in other than combat.

(c) *Limitations.* Salivary deposits is a type of routine dental condition which has no relation to service. Malposed teeth with no pathology shown will not be service connected. Service connection should not be granted for the 3d molars at any time unless there is a definite record showing such teeth to have been diseased after a reasonable period of service. The 3d molars shown as present at induction and missing at discharge will not be granted service connection unless there is an actual record of extraction for reasons other than malposition or impaction. Vincent's disease should not be granted service connection if the service records are entirely negative. To warrant favorable action on Vincent's disease, chronicity, continuity of treatment, or the residual thereof, that is, periodontoclasia or pyorrhea, should be shown by the service records as chronic. Vincent's disease with infrequent episodes of short duration in the active service should be considered as an acute condition and may not be service connected. Gingivitis is not considered a disease entity and is not ratable. Diagnosis of pyorrhea in service after a reasonable period of service will require confirmation by a Veterans Administration examination, including X-ray, before grant of service connection, unless examination is contraindicated by factors such as extraction of all pyorrhectic teeth. Pyorrhea shown during service after a reasonable period of service, involving one or more teeth necessitating extraction, is a sufficient basis for grant of service connection for the tooth or teeth involved.

[26 FR 1592, Feb. 24, 1961, as amended at 44 FR 22720, Apr. 17, 1979]

§ 3.383 Blindness, bilateral kidney involvement or total deafness.

For periods on or after August 28, 1962, blindness in both eyes or bilateral kidney involvement, and for periods on or after December 1, 1965, total deafness in both ears will be considered service connected as provided in this section. Service connection for the bilateral disability will be assigned on the type of service (i.e., wartime or peacetime) on which service connection is established for the unilateral qualifying condition.

(a) *Blindness.* Where the veteran has suffered blindness in one eye as a result of service-connected disability and has suffered blindness in the other eye as a result of non-service-connected disability not the result of his or her own willful misconduct.

(b) *Bilateral kidney involvement.* Where the veteran has suffered the loss or loss of use of one kidney as a result of service-connected disability and has suffered severe involvement of the other kidney such as to cause total disability as a result of non-service-connected disability not the result of his or her own willful misconduct. (Pub. L. 87-610).

(c) *Total deafness.* Where the veteran has suffered total deafness in one ear as a result of a service-connected disability and has suffered total deafness in the other ear as the result of non-service-connected disability not the result of his or her own willful misconduct. (38 U.S.C. 360; Pub. L. 89-311).

[30 FR 14983, Dec. 3, 1965, as amended at 44 FR 22720, Apr. 17, 1979]

§ 3.384 Additional compensation for non-service-connected loss or loss of use of paired extremity.

(a) *General.* Subject to the conditions of this section a veteran who has service-connected loss or loss of use of one extremity and non-service-connected loss or loss of use of the paired extremity is entitled to increased compensation in the amount specified in 38 U.S.C. 314(t).

(b) *Entitlement Criteria.* (1) The service-connected loss or loss of use of an extremity is rated at 40 percent or more disabling; and

(2) The non-service-connected loss or loss or use of the paired extremity would be rated 40 percent or more disabling if service connected; and

(3) The non-service-connected loss or loss of use of the paired extremity is not the result of the veteran's own willful misconduct; and

(4) The veteran is entitled to receive compensation at any rate under 38 U.S.C. 314 (a) through (i) and special monthly compensation under 38 U.S.C. 314(k).

(c) *Effect of judgment or settlement.* If a veteran receives any money or property pursuant to an award in a judicial proceeding based upon, or a settlement or compromise of, any cause of action for damages for the non-service-connected loss or loss of use of the paired extremity upon which entitlement under this paragraph is based, the increased compensation payable by reason of this paragraph shall not be paid for any month following the month in which any such money or property is received until such time as the total amount of the increased compensation that would otherwise have been payable equals the total of the amount of any such money received and the fair market value of any such property received.

(d) *Social security and workers' compensation.* Benefits received under social security or workers' compensation are not subject to recoupment under paragraph (c) of this section even though such benefits may have been awarded pursuant to a judicial proceeding.

(e) *Veterans duty to report.* Any person entitled to increased compensation under this paragraph shall promptly report to the Veterans Administration the receipt of any money or property received pursuant to a judicial proceeding based upon, or a settlement or compromise of, any cause of action or other right of recovery for damages for the non-service-connected loss or loss of use of the paired extremity upon which entitlement under this section is based. The amount to be reported is the total of the amount of money received and the fair market value of property received. Expenses incident to recovery, such as attorney's fees, may not be deducted from the amount to be reported.

[44 FR 22720, Apr. 17, 1979]

EFFECTIVE DATE

§ 3.400 General.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. (38 U.S.C. 3010(a)).

(a) *Unless specifically provided.* On basis of facts found.

(b) *Disability benefits*—(1) *Disability pension* (§ 3.3(c)). Date of receipt of claim or date on which the veteran became permanently and totally disabled, if claim is filed within 1 year from such date, whichever is to the advantage of the veteran: *Provided,* That, an award of pension may not be effective prior to the date entitlement arose. (Pub. L. 93-177; 87 Stat. 694).

(2) *Disability compensation*—(i) *Direct service connection* (§ 3.4(*b*)).

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Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

(ii) *Presumptive service connection (§§ 3.307, 3.308, 3.309).* Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. Where the requirements for service connection are met during service, the effective date will be the day following separation from service if there was continuous active service following the period of service on which the presumption is based and a claim is received within 1 year after separation from active duty.

(c) *Death benefits*—(1) *Death in service (38 U.S.C. 3010(j); Public Law 87-825; §§ 3.4(c), 3.5(b)).* First day of the month fixed by the Secretary concerned as the date of actual or presumed death, if claim is received within 1 year after the date the initial report of actual death or finding of presumed death was made; however, benefits based on a report of actual death are not payable for any period for which the claimant has received, or is entitled to receive an allowance, allotment, or service pay of the veteran.

(2) *Death after separation from service (38 U.S.C. 3010(d); Public Law 87-825; §§ 3.3(d), 3.4(c), 3.5(b)).* First day of the month in which the veteran's death occurred if claim is received within 1 year after the date of death; otherwise, date of receipt of claim.

(3) *Dependency and indemnity compensation*—(i) *Deaths prior to January 1, 1957 (§ 3.702).* Date of receipt of election.

(ii) *Child (38 U.S.C. 3010(e); Public Law 87-825).* First day of the month in which entitlement arose if claim is received within 1 year after the date of entitlement; otherwise, date of receipt of claim.

(iii) *Deaths on or after May 1, 1957 (in-service waiver cases; §§ 3.5(b)(3) and 3.702).* Date of receipt of election.

(d) *Age; veteran 65, widow (widower) 70 (§ 3.208).* In other than original claims date of receipt of claim or 65th (or 70th) birthday, whichever is later, if evidence filed within 1 year after date of request.

(e) *Apportionment (§§ 3.450 through 3.461, 3.551, 3.557).* On original claims, in accordance with the facts found. On other than original claims from the first day of the month following the month in which:

(1) Claim is received for apportionment of a veteran's award, except that where payments to him (her) have been interrupted, apportionment will be effective the day following date of last payment if a claim for apportionment is received within 1 year after that date;

(2) Notice is received that a child included in the widow's or widower's award is not in the widow's or widower's custody, except that where payments to the widow or widower have been interrupted, apportionment will be effective the day following date of last payment if such notice is received within 1 year after that date.

(f) *Federal employees' compensation cases (§ 3.708).* Date authorized by applicable law, subject to any payments made by the Office of Workers' Compensation Programs under the Federal Employees' Compensation Act over the same period of time.

(g) *Correction of military records (38 U.S.C. 3010(i); Public Law 87-825).* Where entitlement is established because of the correction, change or modification of a military record, or of a discharge or dismissal, by a Board established under 10 U.S.C. 1552 or 1553, or because of other corrective action by competent military naval, or air authority, the award will be effective from the latest of these dates:

(1) Date application for change, correction, or modification was filed with the service department, in either an original or a disallowed claim;

(2) Date of receipt of claim if claim was disallowed; or

(3) One year prior to date of reopening of disallowed claim.

(h) *Difference of opinion* (*§ 3.105*). (1) As to decisions not final prior to receipt of an application for reconsideration or to reopen, or prior to reconsideration on Veterans Administration initiative, the date from which benefits would have been payable if the former decision had been favorable.

(2) As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) prior to receipt of an application for reconsideration or to reopen, the date of receipt of such application or the date entitlement arose, whichever is later.

(3) As to decisions which have become final (by appellate decision or failure to timely initiate and perfect an appeal) and reconsideration is undertaken solely on Veterans Administration initiative, the date of Central Office approval authorizing a favorable decision or the date of the favorable Board of Veterans Appeals decision.

(4) Where the initial determination for the purpose of death benefits is favorable, the commencing date will be determined without regard to the fact that the action may reverse, on a difference of opinion, an unfavorable decision for disability purposes by an adjudicative agency other than the Board of Veterans Appeals, which was in effect at the date of the veteran's death.

(i) *Disability or death due to hospitalization, etc. (38 U.S.C. 3010 (c), (d); Public Law 87-825; § 3.800)*—(1) *Disability.* Date injury or aggravation was suffered if claim is received within 1 year after that date; otherwise, date of receipt of claim.

(2) *Death.* First day of month in which the veteran's death occurred if a claim is received within 1 year following the date of death; otherwise, date of receipt of claim.

(j) *Election of Veterans Administration benefits* (*§ 3.700 series*). (1) Unless otherwise provided, the date of receipt of election, subject to prior payments.

(2) July 1, 1960, as to pension payable under Pub. L. 86-211, where pension is payable for June 30, 1960, under the law in effect on that date, including an award approved after that date, if the election is filed within (generally) 120 days from date of notice of the award. The award will be subject to prior payments over the same period of time.

(3) January 1, 1965 as to pension payable under Pub. L. 86-211 (73 Stat. 432) as amended by Pub. L. 88-664 if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election if filed prior to May 1, 1965.

(4) January 1, 1965 as to pension payable under Pub. L. 86-211 (73 Stat. 432) as amended by Pub. L. 88-664 if there was basic eligibility on that date for pension on the basis of service in the Indian wars or Spanish-American War and an election is filed prior to May 1, 1965.

(5) January 1, 1969, as to pension payable under Pub. L. 86-211 (73 Stat. 432), as amended by Pub. L. 90-275 (82 Stat. 64), if there was basic eligibility for pension on June 30, 1960, under the law in effect on that date and an election is filed prior to May 1, 1969.

(6) August 1, 1972, as to pension payable under Pub. L. (73 Stat. 432) as amended by Pub. L. 92-328 (86 Stat. 393) if there was basic eligibility on that date based on death of a veteran of the Spanish-American War and an election is filed prior to December 1, 1972.

(k) *Error* (*§ 3.105*). Date from which benefits would have been payable if the corrected decision had been made on the date of the reversed decision.

(l) *Foreign residence.* (See § 3.653).

(m) *Forfeiture* (*§§ 3.901, 3.902*). Day following date of last payment on award to payee who forfeited.

(n) *Guardian.* Day following date of last payment to prior payee or fiduciary.

NOTE: Award to guardian shall include amounts withheld for possible apportionments as well as money in Personal Funds of Patients.

(o) *Increases (38 U.S.C. 3010(a) and 3010(b)(2), Pub. L. 94-71, 89 Stat. 395; §§ 3.109, 3.156, 3.157)*—(1) *General.* Except as provided in paragraph (o)(2) of this section and § 3.401(b), date of receipt of claim or date entitlement arose, whichever is later. A retroactive increase or additional benefit will not be awarded after basic entitlement has

been terminated, such as by severance of service connection.

(2) *Disability compensation.* Earliest date as of which it is factually ascertainable that an increase in disability had occurred if claim is received within 1 year from such date otherwise, date of receipt of claim.

(p) *Liberalizing laws and Veterans Administration issues.* See § 3.114.

(q) *New and material evidence (§ 3.156)*—(1) *Other than service department records*—(i) *Received within appeal period or prior to appellate decision.* The effective date will be as though the former decision had not been rendered. See §§ 19.153, 19.154 of this chapter.

(ii) *Received after final disallowance.* Date of receipt of new claim or date entitlement arose, whichever is later.

(2) *Service department records.* To agree with evaluation (since it is considered these records were lost or mislaid) or date of receipt of claim on which prior evaluation was made, whichever is later, subject to rules on original claims filed within 1 year after separation from service. See paragraph (g) of this section as to correction of military records.

(r) *Reopened claims (§§ 3.109, 3.156, 3.157).* Date of receipt of claim or date entitlement arose, whichever is later.

(s) *Renouncement (§ 3.106).* Date of receipt of new claim.

(t) *Whereabouts now known.* (See § 3.158(c).)

(u) *Void, annulled or terminated marriage of a child (38 U.S.C. 3010 (a), (k), (l); Pub. L. 93-527, 88 Stat. 1702; § 3.55)* (1) *Void.* Date the parties ceased to cohabit or date of receipt of claim, whichever is later.

(2) *Annulled.* Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(3) *Death.* Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(4) *Divorce.* Date the decree became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(v) *Termination of remarriage of surviving spouse (38 U.S.C. 3010(a), (k); 38 U.S.C. 103(d)(2) and 3010(l) effective January 1, 1971; § 3.55)*—(1) *Void.* Date the parties ceased to cohabit or date of receipt of claim, whichever is the later.

(2) *Annulled.* Date the decree of annulment became final if claim is filed within 1 year after that date; otherwise date of receipt of claim.

(3) *Death.* Date of death if claim is filed within 1 year after that date; otherwise date of receipt of claim. (Effective January 1, 1971)

(4) *Divorce.* Date the decree became final if claim is filed within 1 year after that date; otherwise date of receipt of claim. (Effective January 1, 1971)

(w) *Termination of relationship or conduct resulting in restriction on payment of benefits (38 U.S.C. 103(d)(3), 3010(m), effective January 1, 1971; §§ 3.50(b)(2) and 3.55).* Date of receipt of application filed after termination of relationship and after December 31, 1970.

(x) *Effective date of determination of incompetency (§ 3.353).* Date of rating of incompetency. (Not applicable to an incompetency determination made for insurance purposes under 38 U.S.C. 722).

(y) *Effective date of determination restoring competency (§ 3.353).* Date shown by evidence of record that competency was regained.

(z) *Claims based on service in the Women's Air Forces Service Pilots (WASP), or on service in a similarly situated group (Pub. L. 95-202).* (1) Original claim: Date of receipt of claim or date entitlement arose, whichever is later, or as otherwise provided under this section (e.g., paragraph (b)(1) of this section) except that no benefits shall be awarded for any period prior to November 23, 1977.

(2) Reopened claim: Latest of the following dates:

(i) November 23, 1977.

(ii) Date entitlement arose.

(iii) One year prior to date of receipt of reopened claim.

[26 FR 1593, Feb. 24, 1961, as amended at 27 FR 6878, July 20, 1962; 27 FR 11888, Dec. 1, 1962; 28 FR 13489, Dec. 13, 1963; 29 FR 7769, June 18, 1964; 29 FR 15207, Nov. 11, 1964; 33 FR 12002, Aug. 23, 1968; 34 FR 8703, June 3, 1969; 37 FR 19133, Sept. 19, 1972; 39 FR 20204, June 7, 1974; 39 FR

32988, Sept. 13, 1974; 40 FR 16066, Apr. 9, 1975; 40 FR 54246, Nov. 21, 1975; 41 FR 17387, Apr. 26, 1976; 41 FR 20407, May 18, 1976; 43 FR 11703, Mar. 21, 1978; 44 FR 18971, Mar. 30, 1979; 45 FR 34886, May 23, 1980]

§ 3.401 Veterans.

Awards of pension or compensation payable to or for a veteran will be effective as follows:

(a) *Aid and attendance and housebound benefits.* (1) Except as provided in § 3.400(o)(2), the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of pension or compensation based on an original or reopened claim is effective for a period prior to the date of receipt of the claim, any additional pension or compensation payable by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established. (38 U.S.C. 210(c); 3010(b)(1), (3))

(2) Date of departure from hospital, institution, or domiciliary. (38 U.S.C. 210(c))

(3) Spouse, additional compensation for aid and attendance: Date of receipt of claim or date entitlement arose, whichever is later. However, when an award of disability compensation based on an original or reopened claim is effective for a period prior to date of receipt of the claim additional disability compensation payable to a veteran by reason of the veteran's spouse's need for aid and attendance shall also be awarded for any part of the award's retroactive period for which the spouse's entitlement to aid and attendance is established. (38 U.S.C. 210(c); 3010(b)(1), (2))

(b) *Dependent, additional compensation or pension for.* Latest of the following dates:

(1) Date of claim. This term means the following, listed in their order of applicability:

(i) Date of veteran's marriage, or birth of his or her child, or, adoption of a child, if the evidence of the event is received within 1 year of the event; otherwise.

(ii) Date notice is received of the dependent's existence, if evidence is received within 1 year of the Veterans Administration request.

(2) Date dependency arises.

(3) Effective date of the qualifying disability rating provided evidence of dependency is received within 1 year of notification of such rating action. (38 U.S.C. 3010(f))

(4) Date of commencement of veteran's award. (38 U.S.C. 3010 (f), (n)) (Other increases, see § 3.400(o). For school attendance see § 3.667.)

(c) *Divorce of veteran and wife (husband).* See § 3.501(d).

(d) *Institutional awards (§ 3.852)*—(1) *Chief officer of non-Veterans Administration hospital or institution.* From first day of month in which award is approved or day following date of last payment to veteran, whichever is later.

NOTE: If apportionment under §§ 3.452(c) and 3.454 is in order or payment under § 3.850(a), Personal Funds of Patients account will not be set up but difference withheld for dependents.

(2) *Director of a Veterans Administration hospital or domiciliary.* From day following date of last payment to veteran where veteran previously received payments. On initial or resumed payments from date of entitlement to benefits subject to any amounts payable to or withheld for apportionments for dependents.

(e) *Retirement pay (§ 3.750)*—(1) *Election.* Date of entitlement if timely filed. Subject to prior payments of retirement pay.

(2) *Waiver.* Day following date of discontinuance or reduction of retirement pay.

(3) *Reelection.* Day the reelection is received by the Veterans Administration.

(f) *Service pension (§ 3.3(a)).* Date of receipt of claim.

(g) *Tuberculosis, special compensation for arrested.* As of the date the graduated evaluation of the disability or compensation for that degree of disablement combined with other service-connected disabilities would provide compensation payable at a rate less than $67. See § 3.350(g).

(h) *Temporary increase "General Policy in Rating," 1945 Schedule for Rating Disabilities*—(1) *Section 4.29 of*

this chapter. Date of entrance into hospital, after 21 days of continuous hospitalization for treatment.

(2) *Section 4.30 of this chapter.* Date of entrance into hospital, after discharge from hospitalization (regular or release to non-bed care).

(i) *Increased disability pension based on attainment of age 78.* First day of the month during which veteran attains age 78.

[26 FR 1594, Feb. 24, 1961, as amended at 27 FR 11889, Dec. 1, 1962; 36 FR 4599, Mar. 10, 1971; 39 FR 17222, Mar. 14, 1974; 41 FR 36493, Aug. 30, 1976; 41 FR 55874, Dec. 23, 1976; 41 FR 56804, Dec. 30, 1976; 45 FR 34886, May 23, 1980]

§ 3.402 Surviving spouse.

Awards of pension, compensation, or dependency and indemnity compensation to or for a surviving spouse will be effective as follows:

(a) *Additional allowance of dependency and indemnity compensation for children § 3.5(e).* Commencing date of surviving spouse's award. See § 3.400(c).

(b) *Legal surviving spouse entitled.* See § 3.657.

(c) *Aid and attendance and housebound benefits.* (1) Date of receipt of claim or date entitlement arose whichever is later. However, when an award of DIC (dependency and indemnity compensation) or pension based on an original or reopened claim is effective for a period prior to date of receipt of the claim, any additional DIC or pension payable to the surviving spouse by reason of need for aid and attendance or housebound status shall also be awarded for any part of the award's retroactive period for which entitlement to the additional benefit is established. (38 U.S.C. 210(c); 3010(d))

(2) Date of departure from hospital, institutional or domiciliary care at Veterans Administration expense. This is applicable only to aid and attendance benefits. Housebound benefits may be awarded during hospitalization at Veterans Administration expense. (38 U.S.C. 210(c))

[45 FR 34887, May 23, 1980]

§ 3.403 Children.

Awards of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or surviving spouse on behalf of such child, will be effective as follows:

(a) *Permanently incapable of self-support (§ 3.57(a)(3)).* In original claims, date fixed by §§ 3.400(b) or (c) or 3.401(b). In claims for continuation of payments, 18th birthday if the condition is claimed prior to or within 1 year after that date; otherwise from date of receipt of claim.

(b) *Majority (§ 3.854).* Direct payment to child if competent, from date of majority or, date of last payment, whichever is the earlier date.

(c) *Posthumous child.* Date of child's birth if proof of birth is received within 1 year of that date, or if notice of the expected or actual birth meeting the requirements of an informal claim, is received within 1 year after the veteran's death; otherwise, date of claim. (38 U.S.C. 3010(n); Public Law 91-584, 84 Stat. 1575)

(d) *School attendance.* (See § 3.667.)

(e) *Adopted child.* Date of adoption either interlocutory or final or date of adoptive placement agreement, but not earlier than the date from which benefits are otherwise payable.

[26 FR 1594, Feb. 24, 1961, as amended at 27 FR 11889, Dec. 1, 1962; 36 FR 4599, Mar. 10, 1971; 38 FR 872, Jan. 5, 1973; 39 FR 20204, June 7, 1974; 41 FR 36493, Aug. 30, 1976; 45 FR 34887, May 23, 1980]

§ 3.404 Parents.

Awards of additional amounts of compensation and dependency and indemnity compensation based on a parent's need for aid and attendance will be effective the date of receipt of claim or date entitlement arose, whichever is later. However, when an award of dependency and indemnity compensation based on an original or reopened claim is effective for a period prior to date of receipt of claim, any additional dependency and indemnity compensation payable by reason of need for aid and attendance may also be awarded for any part of the award's retroactive period for which entitlement to aid and attendance is established. When the parent is provided

hospital, institutional or domiciliary care at Veterans Administration expense, the effective date will be the date of departure therefrom. (38 U.S.C. 210(c); 3010(d))

[45 FR 34887, May 23, 1980]

APPORTIONMENTS

§ 3.450 General.

(a)(1) All or any part of the pension, compensation, or emergency officers' retirement pay payable on account of any veteran may be apportioned.

(i) On behalf of his spouse, children, or dependent parents if the veteran is incompetent and is being furnished hospital treatment, institutional, or domiciliary care by the United States, or any political subdivision thereof.

(ii) If the veteran is not residing with his or her spouse, or if the veteran's children are not residing with the veteran and the veteran is not reasonably discharging his or her responsibility for the spouse's or children's support.

(2) Where any of the children of a deceased veteran are not living with the veteran's surviving spouse, the pension, compensation, or dependency and indemnity compensation otherwise payable to the surviving spouse may be apportioned. (38 U.S.C. 3107)

(b) Except as provided in § 3.458(e), no apportionment of disability or death benefits will be made or changed solely because a child has entered active duty with the air, military, or naval services of the United States.

(c) No apportionment will be made where the veteran, the veteran's spouse (when paid "as wife" or "as husband"), surviving spouse, or fiduciary is providing for dependents. The additional benefits for such dependents will be paid to the veteran, spouse, surviving spouse, or fiduciary.

(d) Any amounts payable for children under §§ 3.459, 3.460 and 3.461 will be equally divided among the children.

(e) The amount payable for a child in custody of and residing with the surviving spouse shall be paid to the surviving spouse. Amounts payable to a surviving spouse for a child in the surviving spouse's custody but residing with someone else may be apportioned if the surviving spouse is not reasonably contributing to the child's support.

(f) Prior to release of any amounts the relationship of the claimant and the dependency of a parent will be fully developed, and the necessary evidence secured.

(g) The provisions of § 3.460 are applicable where the surviving spouse is entitled to a higher rate of pension under the circumstances described in that section.

[26 FR 1594, Feb. 24, 1961, as amended at 26 FR 7266, Aug. 11, 1961; 27 FR 6974, July 24, 1962; 32 FR 13226, Sept. 19, 1967; 37 FR 6678, Apr. 1, 1972; 44 FR 45939, Aug. 6, 1979]

§ 3.451 Special apportionments.

Without regard to any other provision regarding apportionment where hardship is shown to exist, pension, compensation, emergency officers' retirement pay, or dependency and indemnity compensation may be specially apportioned between the veteran and his or her dependents or the surviving spouse and children on the basis of the facts in the individual case as long as it does not cause undue hardship to the other persons in interest, except as to those cases covered by § 3.458(b) and (c). In determining the basis for special apportionment, consideration will be given such factors as: Amount of Veterans Administration benefits payable; other resources and income of the veteran and those dependents in whose behalf apportionment is claimed; and special needs of the veteran, his or her dependents, and the apportionment claimants. The amount apportioned should generally be consistent with the total number of dependents involved. Ordinarily, apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship on him or her while apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionee.

[44 FR 45940, Aug. 6, 1979]

§ 3.452 Veteran's benefits apportionable.

Veterans benefits may be apportioned:

(a) If the veteran is not residing with his or her spouse or his or her children and a claim for apportionment is filed for or on behalf of the spouse or children.

(b) Pending the appointment of a guardian or other fiduciary.

(c)(1) Where an incompetent veteran without a fiduciary is receiving institutional care by the United States or a political subdivision, his or her benefit may be apportioned for a spouse or child, or, except as provided in paragraph (c)(3), for a dependent parent, unless such benefit is paid to a spouse ("as wife" or "as husband") for the use of the veteran and his or her dependents.

(2) Where benefits for an incompetent veteran are discontinued under the provisions of § 3.557(b), because of hospitalization by the U.S. Government or any political subdivision, there may be paid to his or her dependent parent or parents on the basis of need as determined by the Veterans' Services Officer all or any part of the benefit which would otherwise be payable. (38 U.S.C. 3203(b)(2))

(3) Where a married veteran is receiving section 306 or improved pension and the amount payable is reduced under § 3.551(c) because of hospitalization, an apportionment may be paid to the veteran's spouse as provided in § 3.454(b). (38 U.S.C. 3203(a))

(d) Where additional compensation is payable on behalf of a parent and the veteran or his or her guardian neglects or refuses to contribute such an amount to the support of the parent the additional compensation will be paid to the parent upon receipt of a claim.

[26 FR 7266, Aug. 11, 1961, as amended at 27 FR 6974, July 24, 1962; 40 FR 21724, May 19, 1975; 44 FR 45940, Aug. 6, 1979]

CROSS REFERENCES: Institutional awards. See § 3.852. Disappearance of veteran. See § 3.656. Reduction because of hospitalization. See § 3.551. Penal institutions. See § 3.666. Incompetents; estate over $1,500 and hospitalized. See § 3.557.

§ 3.453 Veteran's compensation or service pension or retirement pay.

Rates of apportionment of disability compensation, service pension or retirement pay will be determined under § 3.451.

[26 FR 7266, Aug. 11, 1961]

§ 3.454 Veterans disability pension.

Apportionment of disability pension will be as follows:

(a) Where a veteran with spouse, or child is incompetent and without legal fiduciary and is maintained in an institution by the United States or any political subdivision thereof, $25 monthly will be paid as an institutional award to the Director of a Veterans Administration hospital or chief officer of a non-Veterans Administration institution for the use of the veteran, and the balance will be paid to the dependent or dependents. If the veteran has no spouse, or child but has a dependent parent, apportionment will be in accordance with § 3.451.

(b) (1) Where the amount of section 306 pension payable to a married veteran under 38 U.S.C. 521(b), as in effect on December 31, 1978, is reduced to $60 monthly under § 3.551(c), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $60 and the total amount of pension payable on December 31, 1978. (38 U.S.C. 3203(a))

(2) Where the amount of improved pension payable to a married veteran under 38 U.S.C. 521(b) is reduced to $60 monthly under § 3.551(c), an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $60 and the rate payable if pension was being paid under 38 U.S.C. 521(c) including the additional amount payable under 38 U.S.C. 521(e) if the veteran is so entitled. (38 U.S.C. 3203(a))

(c) Where section 306 pension for an incompetent veteran is subject both to reduction under § 3.551(c), and to discontinuance under § 3.557(b) because of hospitalization by the U.S. Govern-

ment or any political subdivision, the rate authorized for a parent or parents will not exceed $60 monthly. (Pub. L. 86-146, 73 Stat. 297; Pub. L. 86-211, 73 Stat. 432; Pub. L. 93-177, 87 Stat. 694; Pub. L. 95-588, 92 Stat. 2497)

(d) Where improved pension for an incompetent veteran is subject both to reduction under § 3.551(c), and to discontinuance under § 3.557(b) because of hospitalization by the U.S. Government or any political subdivision, the rate authorized for a parent or parents will not exceed $60 monthly. (38 U.S.C. 3203(a), (b))

[40 FR 36329, Aug. 20, 1975, as amended at 44 FR 45940, Aug. 6, 1979]

§ 3.458 Veteran's benefits not apportionable.

Veteran's benefits will not be apportioned:

(a) Where the total benefit payable to the disabled person does not permit payment of a reasonable amount to any apportionee.

(b) Where the spouse of the disabled person has been found guilty of conjugal infidelity by a court having proper jurisdiction.

(c) For purported or legal spouse of the veteran if it has been determined that he or she has lived with another person and held herself or himself out openly to the public to be the spouse of such other person, except where such relationship was entered into in good faith with a reasonable basis (for example trickery on the part of the veteran) for the spouse believing that the marriage to the veteran was legally terminated. No apportionment to the spouse will thereafter be made unless there has been a reconciliation and later estrangement.

(d) Where the child of the disabled person has been legally adopted by another person, except the additional compensation payable for the child.

(e) Where a child enters the active military, air, or naval service, any additional amount will be paid to the veteran unless such child is included in an existing apportionment to an estranged spouse. No adjustment in the apportioned award will be made based on the child's entry into service.

(f)(1) For the spouse, child, father or mother of a disabled veteran, where forfeiture was declared prior to September 2, 1959, if the dependent is determined by the Veterans Administration to have been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies.

(2) For any dependent of a disabled veteran, or surviving spouse where forfeiture of benefits by a person primarily entitled was declared after September 1, 1959, by reason of fraud, treasonable acts, or subversive activities. (38 U.S.C. 3503(e); 3504(c); 3505(a))

(g) Until the estranged spouse of a veteran files claim for an apportioned share. If there are any children of the veteran not in his or her custody an apportionment will not be authorized unless and until a claim for an apportioned share is filed in their behalf.

[26 FR 7266, Aug. 11, 1961, as amended at 40 FR 21724, May 19, 1975; 44 FR 45940, Aug. 6, 1979]

§ 3.459 Death compensation.

(a) Death compensation will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse.

(b) The surviving spouse may not be paid less than $65 monthly plus the amount of an aid and attendance allowance where applicable.

[40 FR 21725, May 19, 1975, as amended at 44 FR 45940, Aug. 6, 1979]

§ 3.460 Death pension.

Death pension will be apportioned if the child or children of the deceased veteran are not in the custody of the surviving spouse. Where the surviving spouse's rate is in excess of $70 monthly because of having been the spouse of the veteran during service or because of need for regular aid and attendance, the additional amount will be added to the surviving spouse's share.

(a) *Civil, Indian and Spanish-American wars.* Where pension is payable under 38 U.S.C. 532, 534, or 536 apportionment will be based on the facts in the individual case in accordance with § 3.451.

(b) *Section 306 and old-law death pension.* Appointment of benefits provided under these pension programs

will be at rates approved by the Chief Benefits Director except when the facts and circumstances in a case warrant special apportionment under § 3.451. (38 U.S.C. 3107)

(c) *Improved death pension.* Apportionment of the benefits provided under this program shall be made under the special apportionment provision of § 3.451. (38 U.S.C. 3107)

[41 FR 21324, May 25, 1976, as amended at 43 FR 14018, Apr. 4, 1978; 44 FR 45940, Aug. 6, 1979]

§ 3.461 Dependency and indemnity compensation.

(a) *Conditions under which apportionment may be made.* The surviving spouse's award of dependency and indemnity compensation will be apportioned where there is a child or children under 18 years of age and not in the custody of the surviving spouse. The surviving spouse's award of dependency and indemnity compensation will not be apportioned under this condition for a child over the age of 18 years.

(b) *Rates payable.* (1) The share for each of the chidren under 18 years of age, including those in the surviving spouse's custody as well as those who are not in such custody, will be at rates approved by the Chief Benefits Director except when the facts and circumstances in a case warrant special apportionment under § 3.451. The share for the surviving spouse will be the difference between the children's share and the total amount payable. In the application of this rule, however, the surviving spouse's share will not be reduced to an amount less than 50 percent of that to which the surviving spouse would otherwise be entitled.

(2) The additional amount of aid and attendance, where applicable, will be added to the surviving spouse's share and not otherwise included in the computation.

(3) Where the surviving spouse has elected to receive dependency and indemnity compensation instead of death compensation, the share of dependency and indemnity compensation for a child or children under 18 years of age will be whichever is the greater:

(i) The apportioned share computed under paragraph (b)(1) of this section; or

(ii) The share which would have been payable as death compensation but not in excess of the total dependency and indemnity compensation.

[43 FR 14018, Apr. 4, 1978]

REDUCTIONS AND DISCONTINUANCES

§ 3.500 General.

The effective date of a rating which results in the reduction or discontinuance of an award will be in accordance with the facts found except as provided in § 3.105. The effective date of reduction or discontinuance of an award of pension, compensation, or dependnency and indemnity compensation for a payee or dependent will be the earliest of the dates stated in the paragraphs of this section unless otherwise provided. Where an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit. (38 U.S.C. 3012(b))

(a) *Except as otherwise provided (38 U.S.C. 3012(a)).* In accordance with the facts found.

(b) *Error; payee's or administrative (38 U.S.C. 3012(b), (9), (10)).* (1) Effective date of award or day preceding act, whichever is later, but not prior to the date entitlement ceased, on an erroneous award based on an act of commission or omission by a payee or with his or her knowledge.

(2) Except as provided in paragraph (r) of this section, and § 3.501 (e) and (g), date of last payment on an erroneous award based solely on administrative error or error in judgment.

(c) *Annual income.* See § 3.660.

(d) *Apportionment (§§ 3.450 series; 3.556).* (1) Except as otherwise provided, date of last payment when reason for apportionment no longer exists.

(2) Where pension was apportioned under § 3.551(c), day preceding date of veteran's release from hospital, unless overpayment would result; date of last payment if necessary to avoid overpayment.

(e) *Federal employees' compensation (§ 3.708).* End of month following the

month in which there is received from Office of Workers' Compensation Programs notice that payee has elected benefits under the Federal Employees' Compensation Act. If children on rolls and widow or widower has primary title, award to children discontinued same date as widow's or widower's award.

(f) *Contested claims § 3.402(b) and § 19.117 of this chapter).* Date of last payment.

(g) *Death (38 U.S.C. 3012 (a), (b))*—(1) *Payee (includes apportionee).* Last day of month before death.

(2) *Dependent of payee (includes apportionee).* Last day of the calendar year in which death occurred.

(3) *Veteran receiving retirement pay.* Date of death.

(h) *Dependency of parent (38 U.S.C. 3012; Public Law 90-275; §§ 3.4(a), (b)(2), 3.250, 3.551(b) and 3.660).* See § 3.660.

(i) *Election of Veterans Administration benefits (§ 3.700 series).* Day preceding beginning date of award under other law.

(j) *Foreign residence (38 U.S.C. 3108(a)).* See § 3.653.

(k) *Fraud (38 U.S.C. 3503(a), (d); §§ 3.669 and 3.901).* Beginning date of award or day preceding date of fraudulent act, whichever is later.

(l) *Guardian, marriage or divorce of (§ 3.856).* Date of last payment (pending receipt of information as to change of name).

(m) *Incompetency (§ 3.855).* Date of last payment.

(n) *Marriage (or remarriage) (38 U.S.C. 101(3), 3012 (b))*—(1) *Payee (includes apportionee).* Last day of month before marriage.

(2) *Dependent of payee (includes apportionee).* Last day of the calendar year in which marriage occurred.

(3) *Inferred marriage of child.* As provided in paragraph (n) (1) or (2) of this section.

(4) *Conduct of widow or widower.* Last day of month before inception of relationship.

(o) *Penal institutions.* See § 3.666.

(p) *Philippines (38 U.S.C. 107(a)(3); § 3.8).* Date of last payment when recognition of service withdrawn.

(q) *Renouncement (§ 3.106).* Date of last payment.

(r) *Service connection (38 U.S.C. 3012(b)(6); § 3.105).* Last day of month following 60 days after notice to payee. Applies to reduced evaluation, and severance of service connection.

(s) *Treasonable acts or subvervise activities.* (38 U.S.C. 3504 and 3505; §§ 3.902, 3.903.) Beginning date of award, or day preceding date of commission of treasonable act or subversive activities for which convicted, whichever is later. (See § 3.669.)

(t) *Whereabouts unknown* (§§ 3.158, 3.656). Date of last payment.

(u) *Change in law or Veterans Administration issue, or interpretation.* See § 3.114.

(v) *Failure to furnish evidence.* Except as otherwise provided, date of last payment where evidence requested to establish continued entitlement is not furnished.

[26 FR 1596, Feb. 24, 1961, as amended at 27 FR 8830, Sept. 5, 1962; 27 FR 11889, Dec. 1, 1962; 33 FR 12002, Aug. 23, 1968; 37 FR 6679, Apr. 1, 1972; 39 FR 20204, June 7, 1974; 39 FR 34532, Sept. 26, 1974; 40 FR 36330, Aug. 20, 1975]

CROSS REFERENCE: Failure to return questionnaire. See § 3.661(b).

§ 3.501 Veterans.

The effective date of discontinuance of pension or compensation to or for a veteran will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(a) *Active service pay (38 U.S.C. 3012(b)(3); Public Law 87-825; § 3.700(a)).* Day preceding entrance on active duty. See § 3.654.

(b) *Aid and attendance*—(1) *§ 3.552(b)(1).* Last day of calendar month following month in which veteran is hospitalized at Veterans Administration expense.

(2) *§ 3.552(b)(2).* Last day of calendar month following month in which veteran hospitalized at United States Government expense.

(3) *Aid and attendance for spouse.* End of month in which award action is taken if need for aid and attendance has ceased.

(c) *Disappearance of veteran.* See § 3.656.

(d) *Divorce or annulment (38 U.S.C. 3012(b)(2).* Last day of the calendar year in which divorce or annulment occurred.

(e) *Employability regained (38 U.S.C. 3012(b) (5), (6); Public Law 87-825; § 3.105)*—(1) *Pension.* Last day of month in which discontinuance is approved.

(2) *Compensation.* Last day of month following 60 days after notice to payee.

(f) *Employment questionnaire, failure to return.* Reduce award to the amount payable for the schedular evaluation shown in the current rating as of the day following the date of last payment.

(g) *Evaluation reduced (38 U.S.C. 3012(b) (5), (6); Public Law 87-825; § 3.105)*—(1) *Pension.* Last day of month in which reduction or discontinuance is approved.

(2) *Compensation.* Last day of month following 60 days after notice to payee.

(h) *Examination; failure to report.* See § 3.655.

(i) *Hospitalization.* (1) *§ 3.551(b).* First day of seventh calendar month following admission if veteran without dependents.

(2) *§ 3.551(c).* (i) First day of the third calendar month following admission to domiciliary care if veteran without spouse or child or, though married, is receiving pension at the rate for a veteran without dependents. (38 U.S.C. 3203(a))

(ii) First day of the fourth calendar month following admission for hospital or nursing home care if veteran without spouse or child or, though married, is receiving pension at the rate provided for a veteran without dependents. (38 U.S.C. 3203(a))

(3) *§ 3.557.* Incompetent hospitalized veteran, without dependents, whose estate equals or exceeds $1,500: Date of admission or the first day of the month in which payment was actually received which causes the estate to equal or exceed $1,500, whichever is later. If the veteran was hospitalized for observation and examination, the date treatment began will be considered the date of admission.

(j) *Institutional award and/or to Personal Funds of Patients (§ 3.852).* Date of last payment, when veteran is discharged from hospital, fiduciary appointed, or veteran rated competent.

(k) *Lump-sum readjustment pay.* See § 3.700(a)(2).

(l) *Retirement pay (38 U.S.C. 3012(b)(3); Public Law 87-825; § 3.750).* Day before effective date of retirement pay.

(m) *Temporary increase (38 U.S.C. 3012(b)(8); § 4.29 of this chapter).* Last day of month in which hospitalization or treatment terminated, whichever is earlier, where temporary increase in compensation was authorized because of hospitalization for treatment.

[26 FR 1596, Feb. 24, 1961, as amended at 27 FR 11889, Dec. 1, 1962; 29 FR 12368, Aug. 28, 1964; 29 FR 16329, Dec. 5, 1964; 35 FR 2828, Feb. 11, 1970; 37 FR 6679, Apr. 1, 1972; 38 FR 34115, Dec. 11, 1973; 41 FR 55874, Dec. 23, 1976; 44 FR 45941, Aug. 6, 1979]

§ 3.502 Widows (Widowers).

The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a widow (widower) will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(a) *Additional allowance of dependency and indemnity compensation for children (38 U.S.C. 3012(b), Public Law 92-198, 85 Stat. 663; § 3.5(e)(3)).* Day preceding child's 18th birthday or last day of calendar year in which child's marriage occurred (see § 3.500(n) (2) and (3)), whichever is earlier.

(b) *Pay grade; dependency and indemnity compensation (38 U.S.C. 411(a), 3012(b)(10); Public Law 91-96, 83 Stat. 144).* Date of last payment when rate is reduced because of new certification of pay grade.

(c) *Legal widow (widower) entitled.* Date of last payment on award to another woman (man) as widow (widower). See § 3.657.

(d) *Marriage.* See § 3.500(n).

(e) *Aid and attendance (§ 3.351(a)).* (1) Date of last payment, if need for aid and attendance has ceased.

(2) If hospitalized at Veterans Administration expense as a veteran, the date specified in § 3.552(b) (1) or (3).

[26 FR 1596, Feb. 24, 1961, as amended at 27 FR 11890, Dec. 1, 1962; 33 FR 2995, Feb. 15, 1968; 35 FR 2828, Feb. 11, 1970; 37 FR 6679, Apr. 1, 1972; 41 FR 55874, Dec. 23, 1976]

§ 3.503 Children.

The effective date of discontinuance of pension, compensation, or dependency and indemnity compensation to or for a child, or to or for a veteran or widow (widower) on behalf of such child, will be the earliest of the dates stated in this section. Where an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.

(a) *Age 18 (or 23) (38 U.S.C. 3012(a); § 3.57).* Day before 18th (or 23d birthday).

(b) *Enters service (§§ 3.450(b), 3.458(e)).* Date of last payment of apportioned disability benefits for child not in custody of estranged wife. Full rate payable to veteran. No change where payments are being made for the child to the veteran, his (her) estranged spouse, his widow (her widower), or to the fiduciary of a child not in the widow's (widower's) custody.

(c) *Permanently incapable of selfsupport (38 U.S.C. 3012(a), (b)(6); Public Law 87-825; §§ 3.57, 3.950)*—(1) *Pension.* Date of last payment.

(2) *Compensation or dependency and indemnity compensation.* Last day of month following 60 days after notice to payee.

(d) *Marriage.* See § 3.500(n).

(e) *School attendance.* See § 3.667.

(f) *Stepchild no longer member of veteran's household (§ 3.57).* Last day child was a member of household.

(g) *Two parent cases (§ 3.703).* Day preceding beginning date of award based on service of the other parent.

(h) *Dependents' educational assistance (§§ 3.707, 3.807, and § 21.3023 of this chapter).* Day preceding beginning date of educational assistance allowance.

(i) *Widow (widower) becomes entitled.* Date of last payment. See § 3.657.

(j) *Interlocutory adoption decree or adoptive placement agreement.* Date child left custody of adopting parent during the interlocutory period or during adoptive placement agreement, or date of rescission of the decree or date of termination of the adoptive placement agreement, whichever first occurs.

[26 FR 1597, Feb. 24, 1961, as amended at 27 FR 11890, Dec. 1, 1962; 30 FR 14983, Dec. 3, 1965; 34 FR 839, Jan. 18, 1969; 38 FR 872, Jan. 5, 1973; 41 FR 55875, Dec. 23, 1976]

§ 3.504 Parents; aid and attendance.

The effective date of discontinuance of an increased award because of the parent's need for aid and attendance will be the day of last payment if need for aid and attendance has ceased. If hospitalized at Veterans Administration expense as a veteran the date will be specified in § 3.552(b) (1) or (3). (Public Law 92-197, 85 Stat. 660)

[37 FR 6679, Apr. 1, 1972]

HOSPITALIZATION ADJUSTMENTS

§ 3.551 Reduction because of hospitalization.

(a) *General.* Pension is subject to reduction when a veteran who has neither spouse, child nor dependent parent is hospitalized, unless the veteran is hospitalized for Hansen's disease. The provisions of this section apply to initial periods of hospitalization and to readmissions following discharge from a prior period of hospitalization. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission. Special rules governing discontinuance of aid and attendance allowance are contained in § 3.552 and for discontinuance of awards for incompetent veterans in § 3.557. Except as otherwise indicated the terms "hospitalized" and "hospitalization" in §§ 3.551 through 3.559 mean:

(1) Hospital treatment in a Veterans Administration hospital or in any hospital at Veterans Administration expense.

(2) Institutional, domiciliary or nursing home care in a Veterans Administration institution or domiciliary or at Veterans Administration expense.

(b) *Old law pension, and service pension based on entitlement prior to July 1, 1960.* Old law pension, and service

pension based on entitlement prior to July 1, 1960, in excess of $30 monthly for a veteran who has neither spouse, child nor dependent parent shall continue at the full monthly rate until the end of the sixth calendar month following the month of admission for hospitalization. The rate payable will be reduced effective the first of the seventh calendar month to $30 monthly or 50 percent of the amount otherwise payable, whichever is greater. The reduced rate will be effective the first day of the seventh calendar month following admission. Payment of the amount withheld may be made on termination of hospitalization, as provided in § 3.556. (Sec. 306(b), Pub. L. 95-588; 92 Stat. 2497)

(c) *Section 306 pension, improved pension, and service pension based on entitlement after June 30, 1960.* (1) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents, is being furnished domiciliary care by the Veterans Administration, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the second full calendar month following the month of admission for such care. (38 U.S.C. 3203(a))

(2) Where any veteran having neither spouse nor child, or any veteran who is married or has a child and is receiving pension as a veteran without dependents is being furnished hospital or nursing home care by the Veterans Administration, no pension in excess of $60 monthly shall be paid to or for the veteran for any period after the end of the third full calendar month following the month of admission for such care. (38 U.S.C. 3203(a))

(3) No pension in excess of $60 monthly shall be paid to or for a veteran having neither spouse nor child, or to a veteran who is married or has a child and is receiving pension as a veteran without dependents, for any period after the month in which the veteran is readmitted within 6 months of a period of care of not less than 2 full calendar months. (38 U.S.C. 3203(a))

(4) Where improved pension is being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b) all or any part of the rate payable under 38 U.S.C. 521(c) may be apportioned for a spouse as provided in § 3.454(b). (38 U.S.C. 3203(a))

(5) Where section 306 pension is being paid to a married veteran at a rate for a veteran without dependents all or any part of the monthly amount of pension withheld in excess of $60 may be apportioned for a spouse as provided in § 3.454(b).

(6) The provisions of paragraphs (c)(1), (2) and (3) of this section are not applicable to any veteran who has a child but is receiving pension as a veteran without a dependent because it is reasonable that some part of the child's estate be consumed for the child's maintenance under 38 U.S.C. 522(b).

(7) For the purposes of paragraphs (c)(1), (2) and (3) of this section, if a veteran is furnished hospital or nursing home care by the Veterans Administration and then is transferred to VA-furnished domiciliary care, the period of hospital or nursing home care shall be considered as domiciliary care. Similarly, if a veteran is furnished domiciliary care by the Veterans Administration and then is transferred to VA-furnished hospital or nursing home care, the period of domiciliary care shall be considered hospital or nursing home care.

(d) *Computation of period.* For purposes of computing periods of hospitalization in paragraph (c) of this section, authorized absences of 96 hours or less will be included as periods of hospitalization, and those of over 96 hours excluded. Also, for purposes of that paragraph, periods of treatment or care of 60 total days will be considered two calendar months of hospitalization and periods of 90 total days considered three calendar months, exclusive of authorized absences in excess of 96 hours.

(e) *Readmission.* (1) *Regular discharge.* Except as provided in paragraph (c) of this section, where a veteran has been given an approved discharge or release, readmission the next day to the same or any other Veterans Administration institution begins a new period of hospitalization, unless the veteran was released for

purposes of admission to another Veterans Administration institution.

(2) *Irregular discharge.* When a veteran whose award is subject to reduction under paragraph (b) of this section has been discharged or released from a hospital against medical advice or as the result of disciplinary action, reentry within 6 months from the date of a previous admission constitutes a continuation of that period of hospitalization, and the award will not be reduced prior to the first day of the seventh calendar month following the month of original admission, exclusive of authorized absences. Except as provided in the preceding sentence, if a veteran reenters a hospital within 6 months after an irregular discharge or release against medical advice or as a result of disciplinary action, the award will be reduced as of the date of readmission. A reentry 6 months or more after such discharge or release will be considered as a new admission. (Pub. L. 89-362)

(f) *Proof of dependents.* The veteran will be considered to have neither spouse, child nor dependent parent in the absence of satisfactory proof. Statements contained in the claims folder concerning the existence of such dependents will be considered a prima facie showing. If the necessary evidence is not received: (1) Within 60 days after the date of request where the award is subject to reduction under paragraph (b) of this section, or (2) prior to the effective date of reduction under paragraph (c) of this section, the veteran's award will be reduced on the basis of no dependents. The full rate may be authorized from the date of reduction if the necessary evidence is received within 1 year after the date of request.

[27 FR 7677, Aug. 3, 1962, as amended at 27 FR 8793; Sept. 1, 1962; 37 FR 19133, Sept. 19, 1972; 39 FR 32988, Sept. 13, 1974; 40 FR 45169, Oct. 1, 1975; 41 FR 18412, May 4, 1976; 44 FR 45941, Aug. 6, 1979; 45 FR 35327, May 27, 1980]

CROSS REFERENCES: Time limits. See § 3.109. Apportionment. See § 3.400(e). Reductions and discontinuances; general. See § 3.500. Incompetents; hospitalized. See § 3.557. Incompetents; resumption. See § 3.558.

§ 3.552 Adjustment of allowance for aid and attendance.

(a)(1) When a veteran who is already entitled to the aid and attendance allowance is hospitalized, the additional compensation or increased pension for aid and attendance shall be discontinued as provided in paragraph (b) of this section except as to disabilities specified in paragraph (a)(2) of this section. (See paragraph (k) of this section for rules applicable to a veteran who establishes entitlement to the aid and attendance allowance on or after date of admission to hospitalization).

(2) The allowance for aid and attendance will be continued during hospitalization where the disability is paraplegia involving paralysis of both lower extremities together with loss of anal and bladder sphincter control, or Hansen's disease, except where discontinuance is required by paragraph (b)(2) of this section. In addition, in pension cases only, the aid and attendance allowance will be continued where the pensionable disability is blindness (visual acuity 5/200 or less) or concentric contraction of visual field to 5 degrees or less. Awards are, however, subject to the provisions of § 3.551 (except where the disabling condition is Hansen's disease) and § 3.557.

(3) Additional compensation for dependents under § 3.4(b)(2) is payable during hospitalization in addition to the rates authorized by this section. The rates specified will also be increased by amounts authorized under 38 U.S.C. 314(k) based on independently ratable disability, subject to the statutory ceiling on the total amount of compensation payable as set forth in § 3.350(a).

(b)(1) Where a veteran is admitted for hospitalization on or after October 1, 1964, the additional compensation or increased pension for aid and attendance will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization at the expense of the Veterans Administration.

(2) When a veteran is hospitalized at the expense of the United States Government, the additional aid and attendance allowance authorized by 38

U.S.C. 314(r) (1) or (2) will be discontinued effective the last day of the month following the month in which the veteran is admitted for hospitalization.

(3) Where a veteran affected by the provisions of paragraph (b) (1) and (2) or paragraph (k) of this section is discharged or released from the hospital against medical advice or as the result of disciplinary action, and is readmitted to such hospitalization within 6 months after that date, the allowance, additional compensation, or increased pension will be discontinued effective the day preceding the date of readmission. A readmission 6 months or more after such discharge or release will be considered as a new admission. (38 U.S.C. 3203(e)).

(c) Reduction will not be made where the same monthly rate of compensation would be payable without consideration of need for regular aid and attendance. This can only be determined after careful review of the current maximum entitlement without regard to any amount for aid and attendance.

(d) Where entitlement by reason of need for regular aid and attendance is the basis of the monthly rate under 38 U.S.C. 314(1) the award will be reduced to the rate payable under 38 U.S.C. 314(s).

(e) Where a veteran is in receipt of section 306 pension, the aid and attendance allowance shall be reduced to the housebound rate of $61 monthly (or $76.25 if the veteran was age 78 or older on December 31, 1978). Where a veteran is in receipt of old-law pension, the total amount payable shall be reduced to $100 monthly. Where a veteran is in receipt of improved pension, the applicable aid and attendance rate shall be reduced to the otherwise applicable rate under 38 U.S.C. 521(e). No reduction shall be made, however, for any case involving the disabilities specified in paragraph (a)(2) of this section.

(f) Where entitlement to the rate in 38 U.S.C. 314(o) is based in part on need for regular aid and attendance reduction because of being hospitalized will be to the rate payable for the other conditions shown.

(g) Where a veteran entitled to one of the rates under 38 U.S.C. 314 (l), (m), or (n) by reason of anatomical losses or losses of use of extremities, blindness (visual acuity 5/200 or less or light perception only), or anatomical loss of both eyes is being paid compensation of $1,547 because of entitlement to another rate under section 314(l) on account of need for aid and attendance the compensation will be reduced while hospitalized to the following:

(1) If entitlement is under section 314(l) and in addition there is need for regular aid and attendance for another disability, the award during hospitalization will be $1,217 since the disability requiring aid and attendance is 100 percent disabling. (38 U.S.C. 314(p))

(2) If entitlement is under section 314(m), $1,383.

(3) If entitlement is under section 314(n), $1,547 would be continued, since the disability previously causing the need for regular aid and attendance would then be totally disabling entitling the veteran to the maximum rate under 38 U.S.C. 314(p).

(h) If, because of blindness, a veteran requires regular aid and attendance, but has better vision than "light perception only" the award under 38 U.S.C. 314(m) will be reduced while hospitalized to the rate payable under 38 U.S.C. 314(1).

(i) If the disability meets the aid and attendance requirements of 38 U.S.C. 314(l) and the intermediate or next higher rate was assigned for disability independently ratable at 50 percent or 100 percent, the award based on such entitlement will be reduced because of hospitalization to the amount payable under 38 U.S.C. 314(s).

(j) The section 306 pension aid and attendance allowance authorized by § 3.252(f) is subject to reduction for hospitalization under the provisions of this section in the same manner as the regular section 306 pension aid and attendance allowance. The amount payable shall not be reduced to less than the housebound rate of $61 monthly (or $76.25 monthly if the veteran was age 78 or older on December 31, 1978).

(k)(1) This paragraph is applicable to hospitalized veterans who were not

entitled to the aid and attendance allowance prior to hospital admission but who establish entitlement to it on or after the date of hospital admission.

(2) If the effective date of entitlement to the aid and attendance allowance is on or after the date of admission to hospitalization, the aid and attendance allowance shall not be paid until the date of discharge or release from hospitalization, unless the aid and attendance allowance is based on a disability specified in paragraph (a)(2) of this section. If the aid and attendance allowance is based on a disability specified in paragraph (a)(2) of this section, the aid and attendance allowance shall be paid during hospitalization.

(3) If the aid and attendance allowance is not payable to a veteran under paragraph (k)(2) of this section, the veteran shall receive the appropriate reduced rate under paragraphs (d) through (j) of this section while hospitalized.

[28 FR 1588, Feb. 20, 1963, as amended at 29 FR 12369, Aug. 28, 1964; 30 FR 14983, Dec. 3, 1965; 32 FR 13226, Sept. 19, 1967; 37 FR 19133, Sept. 19, 1972; 38 FR 34115, Dec. 11, 1973; 40 FR 54246, Nov. 21, 1975; 41 FR 55875, Dec. 23, 1976; 44 FR 22721, Apr. 17, 1979; 44 FR 45941, Aug. 6, 1979; 45 FR 25393, Apr. 15, 1980; 46 FR 31011, June 12, 1981]

§§ 3.553—3.555 [Reserved]

§ 3.556 Adjustment on discharge or release.

(a) *Temporary Absence—30 days.* (1) Where a competent veteran whose award was reduced under § 3.551(b) is placed on non-bed care status or other authorized absence of 30 days or more the full monthly rate, excluding any allowance for regular aid and attendance, will be restored effective the date of reduction. The full monthly rate for an incompetent veteran, or for a competent veteran whose pension was reduced under § 3.551(c), will be restored effective the date of departure from the hospital unless it is determined that apportionment for a spouse should be continued. In all instances, any allowance for regular aid and attendance will be restored effective the date of departure from the hospital.

(2) Upon the veteran's return to the hospital, an award which is subject to reduction under § 3.551 (b) or (c) will again be reduced effective the date of the veteran's return to the hospital. In all instances, any allowance for regular aid and attendance will be discontinued, if in order, effective the date of the veteran's return to the hospital.

(b) *Temporary absence—less than 30 days.* A temporary absence of less than 30 days, including the day of departure, will not require adjustment of the award. This applies to any approved absence. Any allowance for regular aid and attendance for such periods will be authorized after the veteran has been discharged from the hospital.

(c) *Adjustment based on need.* Where an award of pension was reduced under § 3.551(c), the full rate covering absences of less than 30 days may be restored, subject to prior payments, prior to discharge from hospitalization at the request of the Director of the hospital, center or domiciliary, where this action is necessary to meet the veteran's financial needs, if the veteran has been hospitalized for more than 6 months and the periods of absence exceed a total of 30 days.

(d) *Irregular discharge.* When a competent veteran is given an irregular discharge, the full rate will be restored effective the date of release from the hospital. Payment of any amount withheld under § 3.551(b) will not be authorized until the expiration of 6 months after termination of hospitalization unless the prior release is changed to a regular release. However, amounts not paid under paragraph (c) of this section covering absence of less than 30 days where the award was reduced under § 3.551(c) will be authorized immediately.

(e) *Regular discharge.* When a veteran, either competent or incompetent, is given a regular discharge or release, the full rate, including any allowance for regular aid and attendance will be restored effective the date of release from the hospital, subject to prior payments. The award will be based on the most recent rating and, where the award was reduced under § 3.551(b),

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will include, in the case of a competent veteran, any amounts withheld because of hospitalization. The amount withheld for an incompetent veteran will not be authorized until the expiration of 6 months following a rating of competency by the Veterans Administration or 6 months following removal of legal disability, whichever is later. Any institutional award will be discontinued effective date of last payment, as provided in § 3.501(j). Where an apportionment made under § 3.551(c) is not continued, the apportionment will be discontinued effective the day preceding the date of the veteran's release from the hospital, or, if adjusted, effective the date of the veteran's release from the hospital, unless an overpayment would result. In the excepted cases, the awards to the veteran and apportionee will be adjusted as of date of last payment.

(f) *Types of discharges.* A discharge is considered regular if it is granted because of having received maximum hospital benefits. A discharge for disciplinary reasons or because of the patient's refusal to accept, neglect of or obstruction of treatment; refusal to accept transfer, or failure to return from authorized absence, is considered irregular.

[27 FR 7678, Aug. 3, 1962, as amended at 27 FR 8794, Sept. 1, 1962; 38 FR 34115, Dec. 11, 1973; 39 FR 34532, Sept. 26, 1974; 40 FR 45169, Oct. 1, 1975; 44 FR 22721, Apr. 17, 1979; 44 FR 45942, Aug. 6, 1979]

§ 3.557 Incompetents; estate over $1,500 and hospitalized.

(a) Where a veteran having neither spouse, child, nor dependent parent is being hospitalized by the Veterans Administration and is rated incompetent by the Veterans Administration by reason of mental illness, the pension of such veteran will be subject to reductions as provided in § 3.551.

(b) Effective December 1, 1959, where a veteran: (1) Is rated incompetent by the Veterans Administration by reason of mental illness; and (2) has neither spouse nor child, and (3) is hospitalized, institutionalized or domiciled by the United States or any political subdivision, with or without charge, and (4) has an estate, derived from any source, which equals or exceeds $1,500, further payments of pension, compensation or emergency officers' retirement pay will not be made, except as provided in paragraph (d) of this section, until the estate is reduced to $500. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission.

(c) Computation of the $1,500 or $500 amounts will include but is not restricted to:

(1) Any money still in an old "Funds Due Incompetent Beneficiaries" account; or

(2) A current "Personal Funds of Patient" account; or

(3) On deposit with the chief officer of the institution; or

(4) In the hands of any fiduciary.

Amounts withheld under § 3.551(b) will not be included.

(d) Payment of pension, compensation or emergency officers' retirement pay to a veteran subject to the provisions of paragraph (b) of this section will be discontinued from the first day of the month in which his or her estate equals or exceeds $1,500. All or any part of the benefit not paid to the veteran may be apportioned for his or her dependent parents on the basis of need as determined by the Veterans Services Officer. If the veteran is not hospitalized by the Veterans Administration there may be paid out of any remaining amounts so much of the pension, compensation or emergency officers' retirement pay as equals the amount charged the veteran for his or her current care and maintenance in the institution in which the treatment or care is furnished, but not more than the amount determined to be the proper charge.

[26 FR 1598, Feb. 24, 1961, as amended at 27 FR 7678, Aug. 3, 1962; 36 FR 25225, Dec. 30, 1971; 40 FR 45170, Oct. 1, 1975; 45 FR 64910, Oct. 1, 1980]

CROSS REFERENCES: Veterans disability pension. See § 3.454(c). Reductions and discontinuances; general. See § 3.500. Reductions and discontinuances; veterans. See § 3.501. Amounts withheld or not paid incompetent veteran. See § 3.1007. Estate $1,500. See § 13.108 of this chapter. Determination of value of estate. See § 13.109 of this chapter.

§ 3.558 Resumption and payment of withheld benefits; incompetents $1,500 estate cases.

(a) Where payment has been discontinued by reason of § 3.557(b), it will not be resumed during hospitalization except as provided in paragraph (b) of this section until proper notice has been received showing the estate is reduced to $500 or less. Payments will not be made for any period prior to the date on which the estate was reduced to $500 or less.

(b) Payments for the veteran will be resumed and apportionment awards discontinued under the applicable provisions of § 3.556(a), (d), and (e) upon authorized absence from the hospital for 30 days or more or a regular or irregular discharge or release. Care and maintenance payments to an institution will not be made for any period the veteran is not receiving such care and maintenance.

(c) Any amount not paid because of the provisions of § 3.557 will be awarded:

(1) To a veteran who is currently rated competent by the Veterans Administration or as to whom a legal disability has been removed, after release from hospitalization and after the expiration of 6 months following the effective date of the rating of competency by the Veterans Administration or removal of the legal disability, whichever is the later. Included for payment under this provision are amounts of compensation or retirement pay withheld pursuant to the provisions of § 3.551(b) (and/or predecessor regulatory provisions) as it was constituted prior to August 1, 1972, and not previously paid because of the provisions of § 3.557(b). (38 U.S.C. 3203 Note)

(2) For a veteran rated incompetent by the Veterans Administration who had met the provisions of paragraph (c)(1) and who was again rated incompetent by the Veterans Administration before award action could be taken thereunder, if he or she has a proper dependent, and if there was no error in the intervening rating of competency. For the purpose of amounts not paid because of the provisions of § 3.557(a), a proper dependent is a wife, husband, child or dependent parent. For the purpose of amounts not paid because of the provisions of § 3.557(b), a proper dependent is a wife, husband or child.

[27 FR 7679, Aug. 3, 1962, as amended at 36 FR 25225, Dec. 30, 1971; 38 FR 34116, Dec. 11, 1973; 40 FR 45170, Oct. 1, 1975; 41 FR 18412, May 4, 1976]

§ 3.559 Resumption—$1,500 cases where estate includes chose in action.

(a) Where payments have been discontinued because of hospitalization and there exists only a claim against a defunct bank, or other institution, or the entire estate is the subject of litigation, or consists of investments of undetermined value, and there is no income to provide for clothing and other needs, and comforts for the veteran, the Veterans Services Officer may consider the guardian's statement setting forth the facts and estimating what the said claim or chose in action would sell for in the open market. If the Veterans Services Officer is satisfied that the value of the estate does not exceed $500, he or she will prepare a certificate to that effect. Upon receipt of this certification by the Claims activity, payments will if otherwise in order be authorized effective the first day of the month in which award action is taken.

(b) When the claim is settled or litigation terminated the Veterans Services Officer will again review the case and, if the estate is then $1,500 or more, will forward an appropriate certification to the Claims activity.

(c) Special cases which do not come within this section or where money is urgently needed should be reported to the Office of the Chief Benefits Director.

[26 FR 1598, Feb. 24, 1961, as amended at 40 FR 14570, Oct. 1, 1975]

Adjustments and Resumptions

§ 3.650 Rate for additional dependent.

The provisions of this section are applicable to adjustments of awards for periods commencing on or after December 1, 1962.

(a) *Running awards.* Where a claim is filed by an additional dependent who has apparent entitlement which, if established, would require reduction

of pension, compensation or dependency and indemnity compensation being paid to another dependent, payments to the person or persons on the rolls will be reduced as follows:

(1) Where benefits would be payable from a date prior to the date of filing claim, the reduction will be effective from the date of potential entitlement of the additional dependent.

(2) Where benefits would be payable from the date of filing claim, the reduction will be effective the date of receipt of the claim by the additional dependent, or date of last payment, whichever is later.

If entitlement of the additional dependent is not established, benefits previously being paid will be resumed, if otherwise in order, commencing the day following the effective date of reduction.

(b) *New awards.* If the additional dependent is found to be entitled, the full rate payable will be authorized effective the date of entitlement.

[29 FR 9564, July 15, 1964]

§ 3.651 Change in status of dependents.

Except as otherwise provided:

(a) A payee who becomes entitled to pension, compensation, or dependency and indemnity compensation or to a greater rate because payment of that benefit to another payee has been reduced or discontinued will be awarded the benefit or increased benefit without the filing of a new claim.

(b) The commencement or adjustment will be effective the day following the reduction or discontinuance of the award to the other payee if the necessary evidence is received in the Veterans Administration within 1 year from the date of request therefor; otherwise from the date of receipt of a new claim.

(c) The rate for the persons entitled will be the rate that would have been payable if they had been the only original persons entitled.

[26 FR 1598, Feb. 24, 1961, as amended 27 FR 11890, Dec. 1, 1962; 30 FR 133, Jan. 7, 1965]

§ 3.652 Determinations of domestic status and dependency.

(a) In any case where benefits are being paid and it is necessary to determine the current facts regarding the veteran's marital status, custody of the children, or dependency of the parents, the claimant will be required to furnish the necessary evidence. If the evidence is not received within a reasonable time, payments authorized by reason of that dependent will be discontinued effective date of last payment.

(b) If the required evidence is received within 1 year from the date of request payments may be adjusted or resumed, if otherwise in order from the date of reduction or discontinuance. If the evidence is not received within 1 year from the date of request therefor, the adjustment or resumption will not be authorized prior to the date of receipt of a new claim.

[26 FR 1598, Feb. 24, 1961, as amended at 27 FR 11890, Dec. 1, 1962]

§ 3.653 Foreign residence.

(a) *General.* Pension, compensation, or dependency and indemnity compensation is not payable to an alien who is located in the territory of or under the control of an enemy of the United States or of its allies. The benefit may, however, be paid to the dependents of such alien, but not in excess of the amount which would be payable to the dependent if the alien were dead. (38 U.S.C. 3108)

(b) *Retroactive payments.* Any amount not paid to an alien under this section, together with any amounts placed to his credit in the special deposit account in the Treasury or covered into the Treasury as miscellaneous receipts under 31 U.S.C. 123–128 will be paid to him on the filing of a new claim. Such claim should be supported with evidence that he has not been guilty of mutiny, treason, or sabotage or rendering assistance to an enemy, as provided in § 3.902(a). (38 U.S.C. 3109)

(c) *Treasury Department list.* This paragraph is applicable to claims for benefits for aliens residing in countries identified on the list established by the Secretary of the Treasury as

countries to which checks could not be delivered with reasonable assurance that the payee would actually receive and be able to negotiate a check for full value.

(1) *Evidence requests.* Requests for evidence to establish either basic or continued entitlement will not be made where such evidence would be obtained from a country on the Treasury Department list unless the claimant requests that checks be sent to him in care of a U.S. Foreign Service post in a country which is not on the list.

(2) *Awards.* Payments for a claimant residing in a country included in the Treasury Department list will not be authorized unless the claimant requests that checks be sent to him in care of a U.S. Foreign Service post in a country which is not on the list.

(3) *Retroactive payments.* Where award action is authorized under paragraph (c)(2) of this section, or a new claim has been filed after a country has been removed from the Treasury Department list, all benefits to which the payee is otherwise entitled will be paid as provided in paragraph (b) of this section. There is no time limit for filing claim.

(d) *Germany and Japan.* Where payments were discontinued before July 1, 1954, because the payee was a citizen or subject of Germany or Japan, no payments will be made for any period prior to the date of filing a new claim. (38 U.S.C. 3109(b))

[26 FR 1599, Feb. 24, 1961, as amended at 31 FR 13172, Oct. 12, 1966]

§ 3.654 Active service pay.

(a) *General.* Pension, compensation, or retirement pay will be discontinued under the circumstances stated in § 3.700(a)(1) for any period for which the veteran received active service pay. For the purposes of this section, active service pay means pay received for active duty, active duty for training or inactive duty training.

(b) *Active duty.* (1) Where the veteran returns to active duty status, the award will be discontinued effective the day preceding reentrance into active duty status. If the exact date is not known, payments will be discontinued effective date of last payment and as of the correct date when the date of reentrance has been ascertained from the service department.

(2) Payments, if otherwise in order, will be resumed effective the day following release from active duty if claim for recommencement of payments is received within 1 year from the date of such release: otherwise payments will be resumed effective 1 year prior to the date of receipt of a new claim. Prior determinations of service connection will not be disturbed except as provided in § 3.105. Compensation will be authorized based on the degree of disability found to exist at the time the award is resumed. Disability will be evaluated on the basis of all facts, including records from the service department relating to the most recent period of active service. If a disability is incurred or aggravated in the second period of service, compensation for that disability cannot be paid unless a claim therefor is filed.

(c) *Training duty.* Prospective adjustment of awards may be made where the veteran waives his Veterans Administration benefit covering anticipated receipt of active service pay because of expected periods of active duty for training or inactive duty training. Where readjustment is in order because service pay was not received for expected training duty, retroactive payments may be authorized if a claim for readjustment is received within 1 year after the end of the fiscal year for which payments were waived.

[27 FR 11890, Dec. 1, 1962]

§ 3.655 Failure to report for Veterans Administration examination.

(a) *Discontinuance.* When a veteran without adequate reason fails to report for Veterans Administration examination, including periods of hospital observation requested for pension or compensation purposes, the awards to the veteran and any dependents will be discontinued, except as provided in paragraph (b) of this section, effective date of last payment.

(b) *Adjustment for static disabilities and for prestabilization ratings.* If the veteran has one or more compensable

static disabilities verified by a Veterans' Administration examination and without adequate reason fails to report for examination, including periods of hospital observation, the awards to the veteran and to any dependents will be amended to pay an amount based solely on the degree of disability of such static disabilities effective the day following the date of last payment. If the veteran has a disability or disabilities for which a prestabilization rating has been assigned, the minimum evaluation provided by the 1957 Looseleaf Edition of the Schedule for Rating Disabilities, 1945 (§ 4.40 et seq. of this chapter) will be assigned for each disability clearly established by the evidence of record and such disabilities will be considered static for the purpose of the award procedures of the foregoing sentence.

(c) *Resumption; no change in evaluation.* When payments have been discontinued because of failure to report for examination, payments will be resumed effective the day following the date of last payment if the evidence clearly establishes that during the period of his failure to report the disability existed in the former compensable degree and the claim was not abandoned and the rating agency confirms and continues the prior evaluation.

(d) *Resumption; reduced evaluation.* If the examination shows a changed condition and the disability is no longer compensable in degree, the award will not be reopened for the period of discontinuance. Except as to abandoned claims, if a lesser compensable degree of disability is shown the award will be resumed at the lower rate.

(e) *Resumption; increased evaluation.* Except as to abandoned claims, if the examination shows increased disability, increased benefits will be authorized from the date of examination or the date of receipt of a claim for such increase, whichever is earlier, with the former rate in effect from the day following date of last payment through the day preceding the date of the increase in rate.

(f) *Abandoned claims.* If the claim was abandoned, and the veteran subsequently states that he is willing to report for examination, benefits may be paid from the date of receipt of the new claim if he reports for such examination within 1 year from date of notice to report.

[27 FR 11890, Dec. 1, 1962, as amended at 36 FR 14467, Aug. 6, 1971]

CROSS REFERENCES: Abandoned claims. See § 3.158.

Claimants required to report when requested. See § 3.329.

Resumption of rating when veteran subsequently reports for Veterans' Administration examination. See § 3.330.

Examination; failure to report. See § 3.501(h).

§ 3.656 Disappearance of veteran.

(a) When any veteran has disappeared for 90 days or more and his or her whereabouts remain unknown to the members of his or her family and the Veterans Administration, disability compensation which he or she was receiving or entitled to receive may be paid to or for his or her spouse, children and parents, effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from the date of receipt of a claim. The total amount payable will be the lesser of these amounts:

(1) Dependency and indemnity compensation.

(2) Amount of compensation payable to the veteran at the time of disappearance, subject to authorized insurance deductions.

(b) Where a veteran's whereabouts become known to the Veterans Administration after an award to dependents has been made as provided in this section, the award to the dependents will be discontinued effective date of last payment, and appropriate action will be taken to adjust the veteran's award in accordance with the facts found. (38 U.S.C. 358)

(c) Awards to dependents will not be continued under this section in any case where the facts are such as to bring into effect the presumption of death under § 3.212.

(d) When any veteran has disappeared for 90 days or more and the veteran's whereabouts remain unknown to members of the veteran's family and the Veterans Administra-

tion, any improved pension, section 306 or service pension which the veteran was receiving or entitled to receive may be paid to or for the spouse or children. The status of the veteran at the time of disappearance, with respect to permanent and total disability, income and net worth will be presumed to continue unchanged. Payment for the spouse or children will be effective the day following the date of last payment to the veteran if a claim is received within 1 year after that date; otherwise from date of receipt of a claim. The total amount payable will be the lesser of these amounts:

(1) The service death pension rate if the veteran was receiving service pension or the improved death pension rate if the veteran was receiving section 306 or improved pension.

(2) The amount of pension payable to the veteran at the time of disappearance. (38 U.S.C. 507)

[26 FR 1599, Feb. 24, 1961, as amended at 27 FR 11891, Dec. 1, 1962; 30 FR 6649, May 14, 1965; 40 FR 14313, Mar. 31, 1975; 44 FR 45942, Aug. 6, 1979]

§ 3.657 Surviving spouse becomes entitled, or entitlement terminates.

Where a surviving spouse establishes entitlement to pension, compensation, or dependency and indemnity compensation, an award to another person as surviving spouse, or for a child or children as if there were no surviving spouse will be discontinued or adjusted as provided in this section.

(a) *Surviving spouse's awards.* For periods on or after December 1, 1962, where a legal surviving spouse establishes entitlement after payments have been made to another person as surviving spouse, the full rate payable to the legal surviving spouse will be authorized effective the date of entitlement. Payments to the former payee will be discontinued as follows:

(1) Where benefits are payable to the legal surviving spouse from a date prior to the date of filing claim, the award to the former payee will be terminated the day preceding the effective date of the award to the legal surviving spouse.

(2) Where benefits are payable to the legal surviving spouse from the date of filing claim, the award to the former payee will be terminated effective the date of receipt of the claim or date of last payment, whichever is later.

(b) *Children's awards.* (1) Where a surviving spouse establishes entitlement and:

(i) Payments were being made for a child or children at a lower monthly rate than that provided where there is a surviving spouse, the award to the surviving spouse will be effective the date provided by the applicable law, and will be the difference between the rate paid for the children and the rate payable for the surviving spouse and children. The full rate will be payable for the surviving spouse effective the day following the date of last payment for the children;

(ii) Payments were being made for a child or children at the same or higher monthly rate than that provided where there is a surviving spouse, the award to the surviving spouse will be effective the day following the date of last payment on the awards on behalf of the children.

(2) Where a surviving spouse has received benefits after entitlement was terminated and,

(i) The child or children were entitled to a lower monthly rate, the award to the surviving spouse will be amended to authorize payment at the rate provided for the children as if there were no surviving spouse, covering the period from the date the surviving spouse's entitlement terminated to the date of last payment. The award for the child or children will be made effective the following day.

(ii) The child or children were entitled to a higher monthly rate, the award to the surviving spouse will be discontinued effective date of last payment. The award to the children will be effective the day following the date the surviving spouse's entitlement terminated and will be the difference between the rate payable for the children and the rate paid on the surviving spouse's award. The full rate will be payable for the children effective the day following the date of last payment to the surviving spouse.

[39 FR 20204, June 7, 1974, as amended at 44 FR 45942, Aug. 6, 1979]

§ 3.658 Offsets; dependency and indemnity compensation.

(a) When an award of dependency and indemnity compensation is made covering a period for which death compensation or benefits under the Federal Employee's Compensation Act, based on military service, have been paid to the same payee based on the same death, the award of dependency and indemnity compensation will be made subject to an offset of payments of death compensation or benefits under the Federal Employees' Compensation Act over the same period.

(b) When an award of dependency and indemnity compensation is made covering a period for which death benefits have been paid to the same payee based on the death of another spouse the award will be made subject to an offset of payments of death pension or compensation, or dependency and indemnity compensation over the same period in the case of the other spouse. (38 U.S.C. 103(d)(2), 3104 (b)(3)).

[41 FR 17387, Apr. 26, 1976]

§ 3.659 Two parents in same parental line.

The provisions of this section are applicable for periods commencing on or after January 1, 1957 in cases involving payments of death compensation or dependency and indemnity compensation, and in addition, for periods commencing on or after June 9, 1960, in cases involving payments of death pension based on death on or after that date.

(a) If death pension, compensation or dependency and indemnity compensation is payable based on the service of one parent, an award of such benefits to or on account of a child will be made subject to any payments of these benefits made to or on account of that child over the same period of time based on the service of another parent in the same parental line.

(b) Any reduction or discontinuance of an award to the child or to a surviving spouse will be effective the day preceding the commencing date of death pension, compensation, or dependency and indemnity compensation or, under the circumstances described in § 3.707, the commencing date of dependents' educational assistance under 38 U.S.C. ch. 35, to or on account of the child based on the service of another parent in the same parental line. Any increase to a surviving spouse or another child will be effective the commencing date of the award to the child.

[27 FR 4917, May 25, 1962, as amended at 29 FR 9564, July 15, 1964; 41 FR 17387, Apr. 26, 1976]

CROSS REFERENCE: Two-parent cases. See § 3.503(g). Two parents in same parental line. See § 3.703.

§ 3.660 Dependency, income and estate.

(a) *Reduction or discontinuance*—(1) *General.* A veteran, surviving spouse or child who is receiving pension, or a parent who is receiving compensation or dependency and indemnity compensation must notify the Veterans Administration of any material change or expected change in his or her income or other circumstances which would affect his or her entitlement to receive, or the rate of, the benefit being paid. Such notice must be furnished when the recipient acquires knowledge that he or she will begin to receive additional income or when his or her marital or dependency status changes. In pension claims subject to § 3.252(b) or § 3.274 and in compensation claims subject to § 3.250(a)(2), notice must be furnished of any material increase in corpus of the estate or net worth.

(2) *Contingency.* Where reduction or discontinuance of a running award of section 306 pension or old-law pension is required because of an increase in income, which increase could not reasonably have been anticipated based on the amount actually received from that source the year before, the reduction or discontinuance shall be made effective the end of the year in which the increase occurred. Where reduction or discontinuance of a running award of improved pension or dependency and indemnity compensation is required because of an increase in income, the reduction or discontinuance shall be made effective the end of the month in which the increase occurred. Where reduction or discontinuance of a running award of any benefit

is required because of an increase in net worth or corpus of estate, because dependency of a parent ceased, or because dependency of another person ceased due to marriage, annulment, divorce or death, the award shall be reduced or discontinued effective the last day of the calendar year in which the increase occurred or dependency ceased. (38 U.S.C. 3012(b))

(3) *Overpayments.* Overpayments created by retroactive discontinuance of benefits will be subject to recovery if not waived. Where dependency and indemnity compensation was being paid to two parents living together, an overpayment will be established on the award to each parent.

(b) *Award or increase; income.* Where pension or dependency and indemnity compensation was not paid for a particular year because the claim was disallowed, an award was deferred under §§ 3.260(b) or 3.271(f), payments were discontinued or made at a lower rate based on anticipated or actual income, benefits otherwise payable may be authorized commencing the first of a calendar year as provided in this paragraph. (38 U.S.C. 3010(h).) In all other cases, benefits may not be authorized for any period prior to the date of receipt of a new claim.

(1) *Anticipated income.* Where payments were not made or were made at a lower rate because of anticipated income, pension or dependency and indemnity compensation may be awarded or increased in accordance with the facts found but not earlier than January 1 of that year if satisfactory evidence is received within the same or the next calendar year.

(2) *Actual income.* Where the claimant's actual income did not permit payment, or payment was made at a lower rate, for a given year, pension or dependency and indemnity compensation may be awarded or increased, effective the beginning of the next year, if satisfactory evidence is received within that year.

(c) *Increases; change in status.* Where there is change in the payee's marital status or status of dependents which would permit payment at a higher rate and the change in status is by reason of the claimant's marriage or birth or adoption of a child, the effective date of the increase will be the date of the event if the required evidence is received within 1 year of the event. Where there is a change in dependency status for any reason other than marriage, or the birth or adoption of a child, which would permit payment at a higher rate, the increased rate will be effective the date of receipt of notice constituting an informal claim if the required evidence is received within 1 year of Veterans Administration request. The rate payable for each period will be determined, as provided in §§ 3.260(f) or 3.273(c). (See § 3.651 as to increase due to termination of payments to another payee. Also see § 3.667 as to increase based on school attendance.)

(d) *Corpus of estate; net worth.* Where a claim has been finally disallowed or terminated because of the corpus of estate and net worth provisions of §§ 3.263 or 3.274 and entitlement is established on the basis of a reduction in estate or net worth, or a change in circumstances such as health, acquisition of a dependent, or increased rate of depletion of the estate, benefits or increased benefits will not be paid for any period prior to the date of receipt of a new claim.

[30 FR 3354, Mar. 12, 1965, as amended at 44 FR 45942, Aug. 6, 1979]

§ 3.661 Income and net worth questionnaires.

(a) *Determination and entitlement.* (1) Where the questionnaire shows a change in income, net worth, marital status, status of dependents or change in circumstances affecting the application of the net worth provisions, the award will be adjusted in accordance with § 3.660(a)(2).

(2) Where there is doubt as to the extent of anticipated income payment of pension or dependency and indemnity compensation will be authorized at the lowest appropriate rate or will be withheld, as provided in § 3.260(b) or § 3.271 (f).

(b) *Failure to return questionnaire—* (1) *Discontinuance.* Discontinuance of pension or dependency and indemnity compensation will be effective the last day of the year for which the actual

income received or net worth was to be reported.

(2) *Resumption of benefits.* Payment may be made, if otherwise in order, from the date of last payment if evidence of entitlement is received within 1 year from the date of termination of payments; otherwise benefits may not be paid for any period prior to date of receipt of the new claim.

[30 FR 3355, Mar. 12, 1965, as amended at 38 FR 28826, Oct. 17, 1973; 44 FR 45942, Aug. 6, 1979]

§§ 3.662—3.665 [Reserved]

§ 3.666 Penal institutions.

Where any individual to or for whom pension is being paid under a public or private law administered by the Veterans Administration is imprisoned in a Federal, State or local penal institution as the result of conviction of a felony or misdemeanor, such pension payments will be discontinued effective on the 61st day of imprisonment following conviction. The payee will be informed of his or her rights and the rights of dependents to payments while he or she is imprisoned as well as the conditions under which payments to him or to her may be resumed on his or her release from imprisonment. Payments of pension authorized under this section will continue until notice is received in the Veterans Administration that the imprisonment has terminated.

(a) *Disability pension.* Payment may be made to the spouse, child or children of a veteran disqualified under this section:

(1) If the veteran continues to be eligible except for the provisions of this section, and

(2) If the annual income of the spouse or child is such that death pension would be payable.

(3) At the rate payable under the death pension law or the rate which the veteran was receiving at the time of imprisonment, whichever is less.

(4) From the day following the date of discontinuance of payments to the veteran, subject to payments made to the veteran over the same period, if an informal claim is received within 1 year after notice to the veteran as required by this section and any necessary evidence is received within 1 year from the date of request; otherwise payments may not be made for any period prior to the date of receipt of a new informal claim.

(b) *Death pension.* Payment may be made to a child or children where a surviving spouse or child is disqualified under this section:

(1) If surviving spouse is disqualified to child or children at the rate of death pension payable if there were no such widow or widower; or

(2) If a child is disqualified, to a surviving spouse or other child or children at the rate of death pension payable if there were no such child, and

(3) From the day following the date of discontinuance of payments to the disqualified person, subject to payments made to that person over the same period if evidence of income is received within 1 year after date of request; otherwise payments may not be made for any period prior to the date of receipt of an informal claim.

(4) The income limitation applicable to eligible persons will be that which would apply if the imprisoned person did not exist.

(c) *Resumption of pension upon release from incarceration.* Pension will be resumed as of the day of release if notice (which constitutes an informal claim) is received within 1 year following release; otherwise resumption will be effective the date of receipt of such notice. Where an award or increased award was made to any other payee based upon the disqualification of the veteran, surviving spouse, or child while in prison, such award will be reduced or discontinued as of date of last payment and pension will be resumed to the released prisoner at a rate which will be the difference, if any, between the total pension payable and the amount which was paid to the other person or persons through the date of last payment and thereafter the full rate.

(d) *Veteran entitled to compensation.* If an imprisoned veteran is entitled to a lesser rate of disability compensation such compensation will be awarded as of the 61st day of imprisonment in lieu of the pension he (she) was receiving provided:

(1) The veteran is single, or

(2) The veteran is married, from the date the veteran requests that the Veterans Administration take such action.

[26 FR 1601, Feb. 24, 1961, as amended at 40 FR 6971, Feb. 18, 1975; 40 FR 22254, May 22, 1975; 44 FR 45943, Aug. 6, 1979]

§ 3.667 School attendance.

(a) *General.* (1) Pension or compensation may be paid from a child's 18th birthday based upon school attendance if the child was at that time pursing a course of instruction at an approved school and a claim for such benefits is filed within 1 year from the child's 18th birthday.

(2) Pension or compensation based upon a course which was begun after a child's 18th birthday may be paid from the commencement of the course if a claim is filed within 1 year from that date.

(3) An initial award of dependency and indemnity compensation to a child in its own right may be paid from the first day of the month in which the child attains age 18 if the child was pursuing a course of instruction at an approved school on the 18th birthday and a claim for such benefits is filed within 1 year from the child's 18th birthday. (38 U.S.C. 3010(e))

(4) An initial award of dependency and indemnity compensation to a child in its own right based upon a course which was begun after the child's 18th birthday may be paid from the first day of the month in which the course commenced if a claim is filed within 1 year from that date. (38 U.S.C. 3010(e))

(5) Where a child was receiving dependency and indemnity compensation in its own right prior to age 18, payments may be continued from the 18th birthday if the child was then attending an approved course of instruction and evidence of such school attendance is received within 1 year from the 18th birthday. Where the child was receiving dependency and indemnity compensation in its own right prior to age 18 and was not attending school on the 18th birthday but commences an approved course of instruction after the 18th birthday, payments may be resumed from the commencing date of the course if evidence of such school attendance is filed within 1 year from that date.

(b) *Vacation periods.* A child is considered to be in school during a vacation or other holiday period if he or she was attending school at the end of the preceding school term and resumes attendance, either in the same or a different approved school, at the beginning of the next term. If an award has been made covering a vacation period, and the child fails to commence or resume school attendance, benefits will be terminated the date of last payment or the last day of the month preceding the date of failure to pursue the course, whichever is the earlier.

(c) *Ending dates.* Except as provided in paragraph (b) of this section, benefits may be authorized through the last day of the month in which a course was or will be completed. (38 U.S.C. 3012(b)(7))

(d) *Transfers to other schools.* Where benefits have been authorized based upon school attendance and it is shown that during a part or all of that period the child was pursuing a different course in the same school or a course in a different school, payments previously made will not be disturbed if the course is approved.

(e) *Accrued benefits only.* When a claim for accrued benefits is filed by or on behalf of a veteran's child over 18 but under 23 years of age, who was pursuing a course of instruction at the time of the payee's death and payment of accrued benefits only is involved, evidence of school attendance need not be confirmed by the school. When the payee's death occurred during a school vacation period, the requirements will be considered to have been met if the child was carried on the school rolls on the last day of the regular school term immediately preceding the date of the payee's death. (38 U.S.C. 3012(b)(7))

(f) *Nonduplication.* Pension, compensation or dependency and indemnity compensation may not be authorized:

(1) After a child has elected to receive educational assistance under 38 U.S.C. chapter 35 (see § 3.707 and § 21.3023 of this chapter); or

(2) Based on an educational program in a school where the child is wholly supported at the expense of the Federal Government, such as a service academy.

[26 FR 1601, Feb. 24, 1961, as amended at 30 FR 14983, Dec. 3, 1965; 32 FR 12114, Aug. 23, 1967; 34 FR 839, Jan. 18, 1969; 34 FR 18122, Nov. 11, 1969; 40 FR 22254, May 22, 1975]

CROSS REFERENCE: Dependents' educational assistance. See § 3.707.

§ 3.668 [Reserved]

§ 3.669 Forfeiture.

(a) *General.* Upon receipt of notice from a Chief Attorney or the Adjudication Officer in the Manila Regional Office that a case is being formally submitted for consideration of forfeiture of a payee's rights or that the payee has been indicted for subversive activities, payments will be suspended effective date of last payment.

(b) *Fraud or treasonable acts.* If forfeiture of rights is not declared, payments will be resumed from date of last payment, if otherwise in order. If it is determined that rights have been forfeited, benefits will be discontinued effective the commencing date of the award or the day preceding the commission of the act resulting in the forfeiture, whichever is later.

(c) *Subversive activities.* If the payee is acquitted of the charge, payments will be resumed from date of last payment, if otherwise in order. If the payee is convicted, benefits will be discontinued effective the commencing date of the award or the day preceding the commission of the act resulting in the forfeiture, whichever is later.

(d) *Pardons.* (1) Where the payee's offense has been pardoned by the President of the United States, the award will be resumed, if otherwise in order, effective the date of the pardon if claim is filed within 1 year from that date; otherwise benefits may not be authorized for any period prior to the date of filing claim. The award will be subject to any existing overpayment.

(2) Payments to a dependent of the person whose benefits were declared forfeited before September 2, 1959, will be discontinued effective the day preceding the date of the pardon.

[27 FR 8616, Aug. 29, 1962, as amended 28 FR 5618, June 7, 1963; 39 FR 28630, Aug. 9, 1974]

CROSS REFERENCES: Fraud. See § 3.901.
Treasonable acts. See § 3.902.
Subversive activities. See § 3.903.

CONCURRENT BENEFITS AND ELECTIONS

§ 3.700 General.

Not more than one award of pension, compensation, or emergency officers', regular or reserve retirement pay, will be made concurrently to any person based on his or her own service except as provided in § 3.803 relating to naval pension and § 3.750(c) relating to waiver of retirement pay. Not more than one award of pension, compensation, or dependency and indemnity compensation may be made concurrently to a dependent on account of more than one period of service of a veteran. (38 U.S.C. 3104(a))

(a) *Veterans*—(1) *Active service pay.* (i) Pension, compensation, or retirement pay on account of his or her own service will not be paid to any person for any period for which he or she receives active service pay. (38 U.S.C. 3104(c)) This includes "sick pay" or "incapacitation pay" received by a member of a reserve component who suffers injury on a training tour and continues to receive such "pay" after expiration of scheduled training pay and not in an active duty status. The "sick pay" or "incapacitation pay" is "active service pay."

(ii) Time spent by members of the ROTC in drills as part of their activities as members of the corps is not active service.

(iii) Reservists may waive their pension, compensation, or retirement pay for periods of field training, instruction, other duty or drills. A waiver may include prospective periods and contain a right of recoupment for the days for which the reservists did not receive payment for duty by reason of failure to report for duty.

(2) *Lump-sum readjustment pay.* (i) A veteran who has received a lump-sum readjustment payment may receive disability compensation for dis-

ability incurred in or aggravated by service prior to the date of receipt of lump-sum readjustment payment subject to deduction of an amount equal to 75 percent of the amount received as readjustment payment.

(ii) The receipt of readjustment pay does not affect the payment of disability compensation based on a subsequent period of service. Compensation payable for service-connected disability incurred or aggravated in a subsequent period of service will not be reduced for the purpose of offsetting readjustment pay based on a prior period of service. (10 U.S.C. 687(b))

(3) *Severance pay.* Where the disability or disabilities found to be service-connected are the same as those upon which disability severance pay is granted, an award of compensation will be made subject to recoupment of the disability severance pay. Prior to the initial determination of the degree of disability recoupment will be at the full monthly compensation rate payable for the disability or disabilities for which severance pay was granted. Following initial determination of the degree of disability recoupment shall not be at a monthly rate in excess of the monthly compensation payable for that degree of disability. For this purpose the term "initial determination of the degree of disability" means the first regular schedular compensable rating in accordance with the provisions of Subpart B, Part 4 of this chapter and does not mean a rating based in whole or in part on a need for hospitalization or a period of convalescense. There is no prohibition against payment of compensation where the veteran received nondisability severance pay or where disability severance pay was based upon some other disability. Compensation payable for service-connected disability other than the disability for which disability severance pay was granted will not be reduced for the purpose of recouping disability severance pay.

(4) *Improved pension.* If a veteran is entitled to improved pension on the basis of the veteran's own service and is also entitled to pension under any pension program currently or previously in effect on the basis of any other person's service, the Veterans Administration shall pay the veteran only the greater benefit. (38 U.S.C. 521(i))

(b) *Dependents*—(1) *Surviving spouse.* Subject to the provisions of paragraph (a)(4) of this section, the receipt of pension, compensation, or dependency and indemnity compensation by a surviving spouse because of the death of any veteran, or receipt of pension or compensation because of his or her own service, shall not bar the payment to the surviving spouse of pension, compensation, or dependency and indemnity compensation because of the death or disability of any other veteran; however, other than insurance, concurrent benefits under laws administered by the Veterans Administration may not be authorized to a surviving spouse by reason of the death of more than one veteran to whom the surviving spouse has been married. The surviving spouse may elect to receive benefits based on the death of one such spouse and the election places the right to benefits based on the deaths of other spouses in suspense. The suspension may be lifted at any time by another election based on the death of another spouse. Benefits payable in the elected case will be subject to prior payments for the same period based on the death of the other spouse where, under the provisions of § 3.400(c), there is entitlement in the elected case prior to date of receipt of the election. (38 U.S.C. 3104)

(2) *Children.* Except as provided in § 3.703 and paragraph (a)(4) of this section, the receipt of pension, compensation, or dependency and indemnity compensation by a child on account of the death of a veteran or the receipt by the child of pension or compensation on account of his or her own service will not bar the payment of pension, compensation, or dependency and indemnity compensation on account of the death or disability of any other veteran.

(3) *Parents.* The receipt of compensation or dependency and indemnity compensation by a parent on account of the death of a veteran or receipt by him or her of pension or compensation on account of his or her own service, will not bar the payment of pension, compensation, or dependency and in-

demnity compensation on account of the death or disability of any other person. (38 U.S.C. 3104(b))

[26 FR 1601, Feb. 24, 1961, as amended at 27 FR 12044, Dec. 6, 1962; 29 FR 11359, Aug. 6, 1964; 29 FR 15207, Nov. 11, 1964; 30 FR 11389, Sept. 8, 1965; 35 FR 10648, July 1, 1970; 40 FR 59346, Dec. 23, 1975; 44 FR 45943, Aug. 6, 1979]

§ 3.701 Elections of pension or compensation.

(a) *General.* Except as otherwise provided, a person entitled to receive pension or compensation under more than one law or section of a law administered by the Veterans Administration may elect to receive whichever benefit, regardless of whether it is the greater or lesser benefit, even though the election reduces the benefits payable to his or her dependents. Such person may at any time elect or reelect the other benefit. An election by a veteran controls the rights of all dependents in that case. An election by a surviving spouse controls the claims of all children including children over 18 and children not in the custody of the surviving spouse. The election of improved pension by a surviving spouse, however, shall not prejudice the rights of any child receiving an apportionment on December 31, 1978. Termination of a marriage or marital relationship which had been the reason for terminating an award of section 306 or old-law pension does not restore to the surviving spouse the right to receive section 306 or old-law pension. The claimant's entitlement, if otherwise established, is under the current provisions of 38 U.S.C. 541. (38 U.S.C. 210(c))

(b) *Form of election.* A statement which meets the requirements of an informal claim may be accepted as an election.

(c) *Change from one law to another.* Except as otherwise provided, where payments of pension or compensation are being made to a person under one law, the right to receive benefits under another law being in suspension, and a higher rate of pension or compensation becomes payable under the other law, benefits at the higher rate will not be paid for any date prior to the date of receipt of an election.

[26 FR 1602, Feb. 24, 1961, as amended at 36 FR 12618, July 2, 1971; 44 FR 45943, Aug. 6, 1979]

§ 3.702 Dependency and indemnity compensation.

(a) *Right to elect.* A person who is eligible for death compensation and who has entitlement to dependency and indemnity compensation pursuant to the provisions of § 3.5(b)(2) or (3) may receive dependency and indemnity compensation upon the filing of a claim. The claim of such a person for service-connected death benefits shall be considered a claim for dependency and indemnity compensation subject to confirmation by the claimant. The effective date of payment is controlled by the provisions of § 3.400(c)(3).

(b) *Effect on child's entitlement.* Where a surviving spouse is entitled to death compensation, the amount of which is based in part on the existence of a child who has attained the age of 18 years, and elects to receive dependency and indemnity compensation, the independent award of dependency and indemnity compensation to which the child is entitled will be awarded to or for the child without separate election by or for the child. Should such a surviving spouse not elect to receive dependency and indemnity compensation, the independent dependency and indemnity compensation to which a child who has attained 18 years of age is entitled, may be awarded upon application by or for the child. The effective date of award in these situations will be in accordance with § 3.400(c)(3)(ii).

(c) *Limitation.* A claim for dependency and indemnity compensation may not be filed or withdrawn after the death of the surviving spouse, child, or parent.

(d) *Finality of election.* An election to receive dependency and indemnity compensation is final and the claimant may not thereafter reelect death pension or compensation in that case. The election is final when the payee (or his fiduciary) has negotiated one check for this benefit or when the payee dies after filing claim. There is no right of reelection.

(e) *Widow (widower) becomes entitled.* A surviving spouse who becomes

eligible to receive death compensation by reason of liberalizing provisions of any law may receive death compensation or elect dependency and indemnity compensation even though dependency and indemnity compensation has been paid to a child or children of the veteran.

(f) *Death pension rate.* (1) Effective October 1, 1961, where the monthly rate of dependency and indemnity compensation payable to a surviving spouse who has children is less than the monthly rate of death pension which would be payable to such surviving spouse if the veteran's death had not been service connected, dependency and indemnity compensation shall be paid to such surviving spouse in an amount equal to the pension rate for any month (or part thereof) in which this rate is greater. (38 U.S.C. 412(b))

(2) Effective June 22, 1966, where the monthly rate of dependency and indemnity compensation payable to a surviving spouse who has children is less than the monthly rate of death pension which would be payable for the children if the veteran's death had not been service connected and the surviving spouse were not entitled to such pension, dependency and indemnity compensation shall be payable to the surviving spouse in an amount equal to the monthly rate of death pension which would be payable to the children for any month (or part thereof) in which this rate is greater. (38 U.S.C. 412(b))

[35 FR 18661, Dec. 9, 1970, as amended at 39 FR 20205, June 7, 1974; 41 FR 17387, Apr. 26, 1976; 44 FR 45943, Aug. 6, 1979]

CROSS REFERENCE: Deaths prior to January 1, 1957. See § 3.400(c)(3)(i).

§ 3.703 Two parents in same parental line.

(a) *General.* Death compensation or dependency and indemnity compensation is not payable for a child if dependency and indemnity compensation is paid to or for a child or to the surviving spouse on account of the child by reason of the death of another parent in the same parental line where both parents died before June 9, 1960. Where the death of one such parent occurred on or after June 9, 1960, gratuitous benefits may not be paid or furnished to or on account of any child by reason of the death of more than one parent in the same parental line.

(b) *Election.* The child or his fiduciary may elect to receive benefits based on the service of either veteran. An election of pension, compensation or dependency and indemnity compensation based on the death of one parent places the right to such benefits based on the death of another parent in suspension. The suspension may be lifted at any time by making another election.

(c) *Other payees.* Where a child has elected to receive pension, compensation, dependency and indemnity compensation or dependents' educational assistance under 38 U.S.C. ch. 35 based on the death of a veteran, he (or she) will be excluded from consideration in determining the eligibility or rate payable to a surviving spouse or another child or children in the case of another deceased veteran in the same parental line. See § 3.659(b).

[27 FR 4993, May 29, 1962, as amended at 39 FR 20205, June 7, 1974]

CROSS REFERENCES: Two-parent cases. See § 3.503(g). Two parents in same parental line. See § 3.659.

§ 3.704 Elections within class of dependents.

(a) *Children.* Where children are eligible to receive monthly benefits under more than one law in the same case, the election of benefits under one law by or on behalf of one child will not serve to increase the rate allowable for any other child under another law in that case. The rate payable for each child will not exceed the amount which would be paid if all children were receiving benefits under the same law. Where a child is no longer eligible to receive pension, compensation or dependency and indemnity compensation because of having elected dependents' educational assistance under 38 U.S.C. chapter 35, the child will be excluded from consideration in determining the rate payable for another child or children.

(b) *Parents.* If there are two parents eligible for dependency and indemnity compensation and only one parent

files claim for this benefit, the rate of dependency and indemnity compensation for that parent will not exceed the amount which would be paid to him if both parents had filed claim for dependency and indemnity compensation. The rate of death compensation for the other parent will not exceed the amount which would be paid if both parents were receiving this benefit.

[26 FR 1602, Feb. 24, 1961, as amended at 27 FR 4993, May 29, 1962; 34 FR 839, Jan. 18, 1969; 39 FR 20205, June 7, 1974]

§§ 3.705—3.706 [Reserved]

§ 3.707 Dependents' educational assistance.

(a) *Child.* The conditions applicable to the bar to payment of pension, compensation or dependency and indemnity compensation for a child concurrently with educational assistance allowance under 38 U.S.C. chapter 35 are set forth in § 21.3023 of this chapter.

(b) *Spouse or surviving spouse.* There is no bar to the payment of pension, compensation or dependency and indemnity compensation to a spouse concurrently with educational assistance allowance under 38 U.S.C. ch. 35.

[34 FR 840, Jan. 18, 1969, as amended at 41 FR 29120, July 15, 1976]

CROSS REFERENCES: Discontinuance. See § 3.503(h). Certification. See § 3.807.

§ 3.708 Federal Employees' Compensation.

(a) *Military service*—(1) *Initial election.* Where a person is entitled to compensation from the Office of Workers' Compensation Programs, under the Federal Employees' Compensation Act (FECA) based upon disability or death due to service in the Armed Forces and is also entitled based upon service in the Armed Forces to pension, compensation or dependency and indemnity compensation under the laws administered by the Veterans' Administration, the claimant will elect which benefit he or she will receive. Pension compensation, or dependency and indemnity compensation may not be paid in such instances by the Veterans' Administration concurrently with compensation from the Office of Workers' Compensation Programs. Benefits are not payable by the Office of Workers' Compensation Programs for disability or death incurred on or after January 1, 1957, based on military service.

(2) *Right of reelection.* Persons receiving compensation from the Office of Workers' Compensation Programs based on death due to military service may elect to receive dependency and indemnity compensation at any time. Once payment of dependency and indemnity compensation has been granted, all further right to FECA benefits is extinguished and only dependency and indemnity compensation is payable thereafter.

(3) *Rights of children.* Where primary title is vested in the surviving spouse, the claimant's election controls the rights of any of the veteran's children, regardless of whether they are in the claimant's custody and regardless of the fact that such children may not be eligible to receive benefits under laws administered by the Office of Workers' Compensation Programs. A child who is eligible for dependency and indemnity compensation or other benefits independent of the surviving spouse's entitlement may receive such benefits concurrently with payment of FECA benefits to the surviving spouse.

(4) *Entitlement based on 38 U.S.C. 351.* The provisions of this paragraph are applicable also in those cases in which disability or death occurs as a result of having submitted to an examination, medical or surgical treatment, hospitalization or training.

(b) *Civilian employment*—(1) *Same disability or death.* Where a person is entitled to compensation from the Office of Workers' Compensation Programs based upon civilian employment and is also entitled to compensation or dependency and indemnity compensation under laws administered by the Veterans' Administration for the same disability or death, the claimant will elect which benefit he or she will receive. On or after September 13, 1960, an award cannot be approved for payment of compensation or dependency and indemnity compensation concurrently with compensation from the Office of Workers' Compensation Programs in such instances and an elec-

tion to receive benefits from either agency is final. See § 3.958. There is no right of reelection. (5 U.S.C. 8116(b)) A child who is eligible for dependency and indemnity compensation or other benefits independent of the surviving spouse's entitlement may receive such benefits concurrently with payment of FECA benefits to the surviving spouse.

(2) *Not the same disability or death.* There is no prohibition against payment of benefits under the Federal Employees' Compensation Act concurrently with other benefits administered by the Veterans' Administration when such benefits are not based on the same disability or death.

[39 FR 18099, May 23, 1974, as amended at 41 FR 29120, July 15, 1976; 44 FR 45943, Aug. 6, 1979]

§ 3.709 Social Security.

Where the Veterans Administration has been notified by the Social Security Administration that payments to any individual have been authorized pursuant to the provisions of section 217(b)(2) of the Social Security Act, the Veterans Administration will notify that agency of any determination that death pension, compensation, or dependency and indemnity compensation is payable to any dependent of the veteran. Any such payments certified by the Social Security Administration covering any period on or after the first of any month for which the Veterans Administration benefit would be payable to or for the same person, not exceeding the amount of any pension, compensation, or dependency and indemnity compensation otherwise payable for periods prior to date of approval of the award will be deemed to have been paid by the Veterans Administration.

[26 FR 1604, Feb. 24, 1961]

§ 3.710 Civil service annuitants.

Veterans Administration benefits may be paid concurrently with civil service retirement benefits. However, payments will be considered income as provided in § 3.262 (e) and (h).

[29 FR 15208, Nov. 11, 1964]

§ 3.711 Improved pension elections.

Except as otherwise provided by this section and § 3.712, a person entitled to receive section 306 or old-law pension on December 31, 1978, may elect to receive improved pension under the provisions of 38 U.S.C. 521, 541, or 542 as in effect on January 1, 1979. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit and there is no right to reelection. Any veteran eligible to make an election under this section who is married to a veteran who is also eligible to make such an election may not receive improved pension unless the veteran's spouse also elects to receive improved pension. (Section 306(a)(1) of Pub. L. 95-588, 92 Stat. 2497).

[46 FR 11661, Feb. 10, 1981]

§ 3.712 Improved pension elections; Spanish American War pensioners.

(a) *Veterans*—(1) *General.* A veteran of the Spanish-American War who meets the service requirements of 38 U.S.C. 512(a) may elect to receive improved pension under 38 U.S.C. 521. A Spanish-American War veteran who elects to receive improved pension is not entitled to the additional rate authorized by 38 U.S.C. 521(g), however. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit and there is no right of reelection.

(2) *Aid and attendance.* A veteran of the Spanish-American War who meets the service requirements of 38 U.S.C. 512(a) and who is receiving or entitled to receive pension based on need for regular aid and attendance shall be paid whichever is the greater: The monthly rate authorized by 38 U.S.C. 512(a) or the monthly rate authorized by 38 U.S.C. 521 as in effect on December 31, 1978, based on the veteran's current income and net worth. Pension under 38 U.S.C. 521, as in effect on December 31, 1978, is not payable if the current size of the veteran's estate is a bar to payment under § 3.252(b) or if the veteran's income exceeds the applicable limitation as in effect on December 31, 1978. Elections are not re-

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quired for this purpose. The change in rate shall be effective the first day of the month in which the facts warrant such change. (38 U.S.C. 512).

(b) *Surviving spouses*—(1) *General.* A surviving spouse of a Spanish-American War veteran eligible for pension under 38 U.S.C. 536 may elect to receive improved pension under 38 U.S.C. 541. Except as provided by § 3.714, an election of improved pension is final when the payee (or the payee's fiduciary) negotiates one check for this benefit and there is no right of reelection.

(2) *Aid and attendance.* A surviving spouse of a Spanish-American War veteran who is receiving or entitled to receive pension based on need for regular aid and attendance shall be paid whichever is the greater: The monthly rate authorized by 38 U.S.C. 536 (a) and (b) and 544 or the monthly rate authorized by 38 U.S.C. 541 and 544, as 38 U.S.C. 541 and 544 were in effect on December 31, 1978, based on the surviving spouse's current income and net worth. Pension under 38 U.S.C. 541 and 544, as in effect on December 31, 1978, is not payable if the current size of the surviving spouse's net worth is a bar to payment under § 3.252(b) or if the surviving spouse's income exceeds the applicable limitation as in effect on December 31, 1978. Elections are not required for this purpose. The change in rate shall be effective the first day of the month in which the facts warrant such change. (38 U.S.C. 536).

[44 FR 45943, Aug. 6, 1979, as amended at 46 FR 11661, Feb. 10, 1981]

§ 3.713 Effective dates of improved pension elections.

(a) *General.* Except as provided in paragraph (b) of this section an election to receive improved pension shall be effective the date of receipt of the election.

(b) *Persons entitled to pension on December 31, 1978.* The effective date of an election to receive improved pension filed before October 1, 1979, by a person entitled to receive either old-law pension or section 306 pension on December 31, 1978, shall be January 1, 1979, or if to the beneficiary's advantage, at any date after January 1, 1979, and before October 1, 1979. The amount of improved pension payable from the effective date of the election shall be reduced by the amount of old-law pension or section 306 pension paid to the beneficiary for such period. (Section 306(d) of Pub. L. 95-588, 92 Stat. 2497).

[44 FR 45944, Aug. 6, 1979]

§ 3.714 Improved pension elections—public assistance beneficiaries.

(a) *Definitions.* The following definitions are applicable to this section.

(1) *Pensioner.* This means a person who was entitled to section 306 or old-law pension, or a dependent of such a person for the purposes of chapter 15 of title 38, United States Code as in effect on December 31, 1978.

(2) *Public assistance.* This means payments under the following titles of the Social Security Act:

(i) Title I (Grants to States for Old Age Assistance and Medical Assistance to the Aged).

(ii) Title X (Grants to States for Aid to the Blind).

(iii) Title XIV (Grants to States for Aid to the Permanently and Totally Disabled).

(iv) Part A of title IV (Aid to Families with Dependent Children).

(v) Title XVI (Supplemental Security Income for the Aged, Blind and Disabled).

(3) *Medicaid.* This means a State plan for medical assistance under title XIX of the Social Security Act.

(4) *Informed election.* The term "informed election" means an election of improved pension (or a reaffirmation of a previous election of improved pension) after the Veterans Administration has complied with the requirements of paragraph (e) of this section.

(b) *General.* In some States only a person in receipt of public assistance is eligible for medicaid. When this is the case the following applies effective January 1, 1979:

(1) A pensioner may not be required to elect improved pension to receive, or to continue to receive, public assistance; or

(2) A pensioner may not be denied (or suffer a reduction in the amount of) public assistance by reason of fail-

ure or refusal to elect improved pension.

(c) *Public assistance deemed to continue.* Public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) payable to a pensioner may have been terminated because the pensioner's income increased as a result of electing improved pension. In this instance public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) shall be deemed to have remained payable to a pensioner for each month after December 1978 when the following conditons are met:

(1) The pensioner was in receipt of pension for the month of December 1978; and

(2) The pensioner was in receipt of public assistance (or a suppiementary payment under Pub. L. 93-233, sec. 13(c)) prior to June 17, 1980 and for the month of December 1978, and

(3) The pensioner's public assistance payments (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) were discontinued because of an increase in income resulting from an election of improved pension.

(d) *End of the deemed period of entitlement to public assistance.* The deemed period of entitlement to public assistance (or a supplementary payment under Pub. L. 93-233, sec. 13(c)) ends the first calendar month that begins more than 10 days after a pensioner makes an informed election of improved pension. (If the pensioner is unable to make an informed election the informed election may be made by a member of the pensioner's family.) A pensioner who fails to disaffirm a previously made election of improved pension within the time limits set forth in paragraph (e) of this section shall be deemed to have reaffirmed the previous election. This will also end the deemed period of entitlement to public assistance.

(e) *Notice of right to make informed election or disaffirm election previously made.* The Veterans Administration shall send a written notice to each pensioner to whom paragraph (b) of this section applies and who is eligible to elect or who has elected improved pension. The notice shall be in clear and understandable language. It shall include the following:

(1) A description of the consequences to the pensioner (and the pensioner's family if applicable) of losing medicaid eligibility because of an increase in income resulting from electing improved pension; and

(2) A description of the provisions of paragraph (b) of this section; and

(3) In the case of a pensioner who has previously elected improved pension, a form for the purpose of enabling the pensioner to disaffirm the previous election of improved pensions; and

(4) The following provisons of Pub. L. 96-272, sec. 310(b)(2)(B):

(i) That a pensioner has 90 days from the date the notice is mailed to the pensioner to disaffirm a previous electon by completing the disaffirmation form and mailing it to the Veterans Administration.

(ii) That a pensioner who disaffirms a previous election shall receive, beginning the calendar month after the calendar month in which the Veterans Administration receives the disaffirmation, the amount of pension payable if improved pension had not been elected.

(iii) That a pensioner who disaffirms a previous election may again elect improved pension but without a right to disaffirm the subsequent election.

(iv) That a pensioner who disaffirms an election of improved pension shall not be indebted to the United States for the period in which the pensioner received improved pension. (Pub. L. 96-272, sec. 310; 94 Stat. 500).

(f) *Notification to the Department of Health and Human Services.* The Veterans Administration shall promptly furnish the Department of Health and Human Services the following information:

(1) The name and identifying information of each pensioner who disaffirms his or her election of improved pension.

(2) The name and identifying information of each pensioner who fails to disaffirm and election of improved pension within the 90-day period described in paragraph (e)(4)(i) of this section.

(3) The name and identifying information of each pensioner who after disaffirming his or her election of im-

proved pension, subsequently reelected improved pension. (38 U.S.C. 210(c))

[46 FR 11661, Feb. 10, 1981]

RETIREMENT

§ 3.750 Retirement pay.

(a) *General.* Except as provided in paragraph (c) of this section and § 3.751, any person entitled to receive retirement pay based on service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration; or the National Oceanic and Atmospheric Administration may not receive such pay concurrently with benefits payable under laws administered by the Veterans Administration. The term "retirement pay" includes retired pay and retainer pay.

(b) *Election.* A veteran entitled to retirement pay as well as pension or compensation may elect which of the benefits he or she desires to receive. An election of retirement pay does not bar him or her from making a subsequent election of the other benefit to which he or she is entitled. An election filed within 1 year from the date of notification of Veterans Administration entitlement will be considered as "timely filed" for the purpose of § 3.401(e)(1). If the veteran is incompetent the 1-year period will begin on the date notification is sent to the next friend or fiduciary. In initial determinations, elections may be applied retroactively if the claimant was not advised of his or her right of election and the effect thereof.

(c) *Waiver.* A person specified in paragraph (a) of this section may receive pension or compensation upon filing with the service department concerned a waiver of so much of his (or her) retirement pay as is equal in amount to the pension or compensation to which he (or she) is entitled. In the absence of a specific statement to the contrary, the filing of an application for compensation or pension by a veteran entitled to retirement pay constitutes such a waiver. (38 U.S.C. 3105)

[29 FR 12260, Aug. 27, 1964, and 36 FR 5341, Mar. 20, 1971, as amended at 41 FR 53797, Dec. 9, 1976]

CROSS REFERENCE: Concurrent benefits and elections; general. See § 3.700.

§ 3.751 Statutory awards; retired service personnel.

Retired Regular and Reserve officers and enlisted personnel are not entitled to statutory awards of disability compensation from the Veterans Administration in addition to their retirement pay. However, under § 3.750(c), eligible persons may waive an amount equal to the basic disability compensation and any statutory award otherwise payable by the Veterans Administration.

[41 FR 53797, Dec. 9, 1976]

§ 3.752 [Reserved]

§ 3.753 Public Health Service.

Disability compensation may be paid concurrently with retirement pay to an officer of the commissioned corps of the Public Health Service, who was receiving disability compensation on December 31, 1956, as follows:

(a) An officer who incurred a disability before July 29, 1945, but retired for nondisability purposes prior to such date.

(b) An officer who incurred a disability before July 29, 1945, but retired for nondisability purposes between July 4, 1952, and December 31, 1956.

(c) An officer who incurred a disability between July 29, 1945, and July 3, 1952, but retired for nondisability purposes between July 4, 1952, and December 31, 1956.

[26 FR 1604, Feb. 24, 1961]

§ 3.754 Emergency officers' retirement pay.

A retired emergency officer of World War I has basic eligibility to retirement pay by the Veterans Administration under Public Law 87-875 (sec. 11(b), Public Law 85-857) from date of filing application therefor after October 24, 1962, if the following requirements are met:

(a) Emergency officers' retirement pay would have been granted under Public Law 506, 70th Congress (Act of

May 24, 1928) if application therefor had been filed before May 25, 1929.

(b) Such retirement pay would have continued to be payable under section 10 of Public Law 2, 73d Congress, or under section 1 of Public Law 743, 76th Congress.

(c) The monthly rate of retirement pay at any time between May 24, 1928 and May 24, 1929, inclusive, would have been lower than the monthly rate of disability compensation payable to the retired emergency officer.

[28 FR 72, Jan. 3, 1963]

CROSS REFERENCE: Emergency officers' retirement pay. See § 3.953(b).

SPECIAL BENEFITS

§ 3.800 Disability or death due to hospitalization, etc.

(a) Where disease, injury, death or the aggravation of an existing disease or injury occurs as a result of having submitted to an examination, medical or surgical treatment, hospitalization or the pursuit of a course of vocational rehabilitation under any law administered by the Veterans Administration and not the result of his (or her) own willful misconduct, disability or death compensation, or dependency and indemnity compensation will be awarded for such disease, injury, aggravation, or death as if such condition were service connected. The commencing date of benefits is subject to the provisions of § 3.400(i). (38 U.S.C. 351)

(1) Benefits under paragraph (a) of this section will be in lieu of any benefits the veteran may be entitled to receive under the Federal Employees' Compensation Act inasmuch as concurrent payments are prohibited. (See § 3.708.)

(2) Where any person is awarded a judgment on or after December 1, 1962, against the United States in a civil action brought pursuant to 28 U.S.C. 1346(b), or enters into a settlement or compromise on or after December 1, 1962, under 28 U.S.C. 2672 or 2677, by reason of a disability, aggravation or death within the purview of this section, no compensation or dependency and indemnity compensation shall be paid to such person for any month beginning after the date such judgment, settlement, or compromise on account of such disability, aggravation, or death becomes final until the total amount of benefits which would be paid except for this provision equals the total amount included in such judgment, settlement, or compromise. (38 U.S.C. 351; sec. 3, Public Law 87-825)

(3) If an administrative award was made or a settlement or compromise became final before December 1, 1962, compensation or dependency and indemnity compensation may not be authorized for any period after such award settlement, or compromise whether before or after December 1, 1962. There is no bar to payment of compensation or dependency and indemnity compensation and no set-off because of a judgment which became final before December 1, 1962, unless specified in the terms of the judgment.

(b)(1) If death occurred prior to January 1, 1957, the benefit payable will be death compensation. See §§ 3.5(b)(2) and 3.702 as to right of election to dependency and indemnity compensation.

(2) If death occurs on or after January 1, 1957, the benefit payable will be dependency and indemnity compensation.

[26 FR 1604, Feb. 24, 1961, as amended at 27 FR 11892, Dec. 1, 1962; 29 FR 16252, Dec. 4, 1964; 39 FR 34532, Sept. 26, 1974]

CROSS REFERENCES: Claims; injury due to hospital treatment, etc. See § 3.154.

Effective dates; disability or death due to hospitalization, etc. See § 3.400(i).

§ 3.801 Special acts.

(a) *General.* A special act is one authorizing the payment of benefits to a particular person or persons. If a beneficiary in a special act has no claim before the Veterans Administration, a formal applicaton must be filed before benefits may be awarded.

(b) *Limitations.* Where the rate, commencement, and duration are fixed by a special act, they are not subject to be varied by the provisions and limitations of the public laws, but where not fixed, the rate and continuance of the benefit is subject to variance in accordance with the public laws.

(c) *Provisions of act.* (1) When pension or compensation is granted by a special act, which fixes the rate and commencement, the rate thereunder cannot be increased nor can any other pension or compensation be paid in the absence of the payee's election, unless the special act expressly states that the benefit granted thereby is in addition to the benefit which the person is entitled to receive under any public law.

(2) If a special act corrects the nature of separation from military service and does not grant pension or compensation directly, the claimant acquries a status so that he or she may apply for and be allowed benefits. The claimant, then, is placed in the same position he or she would have been if originally released under conditions other than dishonorable.

(d) *Service.* A special act of Congress, reciting that a person is considered to have been mustered into the service on a named date and honorably discharged on a subsequently named date, is sufficient regardless of whether the service department has any record of such service.

(e) *Hospitalization.* Pension payable under special acts is subject to reduction pursuant to §§ 3.551 and 3.557.

[26 FR 1605, Feb. 24, 1961, as amended at 39 FR 34532, Sept. 26, 1974]

§ 3.802 Medal of Honor.

(a) The Secretary of the Department of the Army, the Department of the Navy, the Department of the Air Force, or the Department of Transportation will determine the eligibility of applicants to be entered on the Medal of Honor Roll and will deliver to the Administrator of the Veterans Administration a certified copy of each certificate issued in which the right of the person named in the certificate to the special pension is set forth. The special pension will be authorized on the basis of such certification. (38 U.S.C. 560, 561)

(b) An award of special pension of $200 monthly (prior to Jan. 1, 1979, $100 monthly) will be made as of the date of filing of the application with the Secretary concerned. The special pension will be paid in addition to all other payments under laws of the United States. However, a person awarded more than one Medal of Honor may not receive more than one special pension. (38 U.S.C. 562)

[26 FR 1605, Feb. 24, 1961, as amended at 32 FR 6840, May 4, 1967; 44 FR 22721, Apr. 17, 1979]

§ 3.803 Naval pension.

(a) Payment of naval pension will be authorized on the basis of a certification by the Secretary of the Navy. (10 U.S.C. 6160)

(b) Awards of naval pension in effect prior to July 14, 1943, or renewed or continued may be paid concurrently with Veterans Administration pension or compensation; however, naval pension allowance under 10 U.S.C. 6160 may not exceed one-fourth of the rate of disability pension or compensation otherwise payable, exclusive of additional allowances for dependents or specific disabilities.

(c) New awards of naval pension may not be made concurrently with Veterans Administration pension or compensation. (38 U.S.C. 3104(a))

(d) Naval pension remaining unpaid at the date of the veteran's death is not payable by the Veterans Administration as an accrued benefit.

[26 FR 1605, Feb. 24, 1961, as amended at 28 FR 2857, Mar. 22, 1963; 44 FR 22721, Apr. 17, 1979]

§ 3.804 Special allowance under 38 U.S.C. 412.

(a) The provisions of this section are applicable to the payment of a special allowance by the Veterans Administration to the surviving dependents of a veteran who served after September 15, 1940, and who died on or after January 1, 1957, as a result of such service and who was not a fully and currently insured individual under title II of the Social Security Act.

(b) The special allowance is not payable:

(1) Where the veteran's death resulted from Veterans Administration hospitalization, treatment, examination, or training;

(2) Where the veteran's death was due to service rendered with the Commonwealth Army of the Philippines while such forces were in the service

of the Armed Forces pursuant to the military order of the President dated July 26, 1941, or was due to service in the Philippine Scouts under section 14, Public Law 190, 79th Congress.

(c) A claim for dependency and indemnity compensation on a form prescribed will be accepted as a claim for the special allowance where it is determined that this benefit is payable or where a specific inquiry concerning entitlement to the special allowance is received.

(d) Payment of this allowance will be authorized on the basis of a certification from the Social Security Administration. Award actions subsequent to the original award, including adjustment and discontinuance, will be made in accordance with new certifications from the Social Security Administration.

(e)(1) The special allowance will be payable only if the death occurred:

(i) While on active duty, active duty for training, or inactive duty training as a member of a uniformed service (line of duty is not a factor); or

(ii) As the result of a disease or injury which was incurred or aggravated in line of duty while on active duty or active duty for training, or an injury which was incurred or aggravated in line of duty while on inactive duty training, as a member of a uniformed service after September 15, 1940, if the veteran was discharged or released from the period of such duty, under conditions other than dishonorable.

(2) Where the veteran died after separation from service:

(i) Discharge from service must have been under conditions other than dishonorable as outlined in § 3.12.

(ii) Line of duty and service connection will be determined as outlined in § 3.1(k) and (m) and the § 3.300 series.

[26 FR 1605, Feb. 24, 1961]

§ 3.805 Loan guaranty for surviving spouses; certification.

A certification of loan guaranty benefits may be extended to surviving spouses based on an application filed on or after January 1, 1959, if:

(a) The veteran served in the Armed Forces of the United States (Allied Nations are not included) at any time on or after September 16, 1940; and

(b) The veteran died in service; or

(c) The veteran died after separation from service and such separation was under conditions other than dishonorable provided the veteran's death was the result of injury or disease incurred in or aggravated by service in line of duty rendered on or after September 16, 1940, regardless of the date of entrance into such service (cases where compensation is payable because of death resulting from hospitalization, treatment, examination, or training are not included); and

(d) The widow (widower) meets the requirements of the term "widow" ("widower") as outlined in § 3.50; and

(e) The veteran's widow (widower) is unmarried; and

(f) The applicant is not herself (himself) an eligible veteran.

[26 FR 1605, Feb. 24, 1961, as amended at 31 FR 4347, Mar. 12, 1966; 37 FR 24662, Nov. 18, 1972; 40 FR 54245, Nov. 21, 1975, 41 FR 49636, Nov. 10, 1976; 44 FR 22721, Apr. 17, 1979]

CROSS REFERENCES: Wife, widow or spouse. See § 3.50(b). Terminated marital relationships. See § 3.55.

§ 3.806 Death gratuity; certification.

(a) Where a veteran dies on or after January 1, 1957, and during the 120-day period which begins on the day following the date of his or her discharge or release from active duty, active duty for training, or inactive training duty, the Veterans Administration will certify that fact to the Secretary concerned if the Veterans Administration determines on the basis of a claim filed with it that:

(1) Death resulted from:

(i) Disease or injury incurred or aggravated while on such active duty or active duty for training; or

(ii) Injury incurred or aggravated while on such inactive duty training; and

(2) The deceased person was discharged or released from such service under conditions other than dishonorable.

(b) In all cases, other than listed in paragraph (a) of this section, the certi-

fication will be furnished at the request of the Secretary concerned.

(c) For the purposes of this section, line of duty is not a factor. The standards, criteria, and procedures for determining incurrence or aggravation of a disease or injury under paragraph (a) of this section are those applicable under disability and death compensation laws administered by the Veterans Administration. (38 U.S.C. 423)

[26 FR 1605, Feb. 24, 1961, as amended at 40 FR 54245, Nov. 21, 1975]

§ 3.807 Dependents' educational assistance; certification.

For the purposes of dependents' educational assistance under 38 U.S.C. ch. 35 (see § 21.3020 of this chapter), the child, wife (husband) or widow (widower) of a veteran or serviceman (servicewoman) will have basic eligibility if the following conditions are met:

(a) *General.* Basic eligibility exists if the veteran:

(1) Was discharged from service under conditions other than dishonorable, or died in service; and

(2) Has a permanent total service-connected disability; or

(3) A permanent total service-connected disability was in existence at the date of the veteran's death; or

(4) Died as a result of service-connected disability; or (if a serviceman or servicewoman)

(5) Is on active duty as a member of the Armed Forces and now is, and, for a period of more than 90 days, has been listed by the Secretary concerned as missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign Government or power.

(b) *Service.* Service-connected disability or death must have been the result of active military, naval, or air service on or after April 21, 1898. (Pub. L. 89-358; 80 Stat. 12) Effective September 30, 1966, educational assistance for a child (but not for a wife (husband) or widow (widower)) may be authorized based on service in the Philippine Commonwealth Army or as a Philippine Scout as defined in § 3.8 (b), (c), or (d), (38 U.S.C. 1765).

(c) *Service connection.* The standards and criteria for determining service connection, either direct or presumptive, are those applicable to the period of service during which the disability was incurred or aggravated (38 U.S.C. 1701(a)). Cases where eligibility for service-connected benefits is established under § 3.800 are not included.

(d) *Relationship*—(1) "Child" means the son or daughter of a veteran who meets the requirements of § 3.57, except as to age and marital status.

(2) "Wife" means a person whose marriage to the veteran meets the requirements of § 3.50(a). A husband is included.

(3) "Widow" means a person whose marriage to the veteran meets the requirements of § 3.50(b) or § 3.52. A widower is included.

[29 FR 9537, July 14, 1964, as amended at 31 FR 4347, Mar. 12, 1966; 34 FR 840, Jan. 18, 1969; 38 FR 8658, Apr. 5, 1973; 40 FR 54245, Nov. 21, 1975]

CROSS REFERENCES: Husband or widower. See § 3.51 Discontinuance. See § 3.503(h) Election; concurrent benefits. See § 3.707 Nonduplication. See § 21.3023 of this chapter.

§ 3.808 Automobiles or other conveyances; certification.

A certification of eligibility for financial assistance in the purchase of one automobile or other conveyance in an amount not exceeding $3,800 (including all State, local, and other taxes where such are applicable and included in the purchase price) and of basic entitlement to necessary adaptive equipment will be made where the claimant meets the requirements of paragraphs (a), (b) and (c) of this section.

(a) *Service.* The claimant must have had active military, naval or air service.

(b) *Disability.* (1) One of the following must exist and be the result of injury or disease incurred or aggravated during active military, naval or air service;

(i) Loss or permanent loss of use of one or both feet;

(ii) Loss or permanent loss of use of one or both hands;

(iii) Permanent impairment of vision of both eyes: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual

acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20° in the better eye.

(2) Veterans not serving on active duty must be entitled to compensation for the disability. As to any claimant the disability must be service connected in accordance with usual criteria. (See §§ 3.1 (m) and (n), 3.301-3.310.)

(c) *Claim for a conveyance.* A specific application for financial assistance in purchasing a conveyance is required which must contain a certification by the claimant that the conveyance will be operated only by persons properly licnesed. The application will also be considered as an application for the adaptive equipment specified in paragraph (d)(1) of this section or deemed necessary by the Chief Medical Director or designee to insure that the claimant will be able to operate the conveyance in a manner consistent with safety to him or herself and to satisfy the applicable standards of licensure of the proper licensing authorities. There is no time limitation in which to apply. An application by a claimant on active duty will be deemed to have been filed with the Veterans Administration on the date it is shown to have been placed in the hands of military authority for transmittal.

(d) *Certifications for adaptive equipment and for services thereto.* (1) Simultaneously with the certification provided pursuant to the preamble of this section, a claimant for financial assistance in the purchase of an automobile will be furnished a certificate of eligibility for financial assistance in the purchase of such adaptive equipment specified in paragraph (e) (1) and (2) of this section as may be appropriate to his or her losses unless the need for such equipment is contraindicated by his or her physical or legal inability to operate the vehicle.

(2) Upon application further equipment needed and desired by the claimant may be authorized upon certification by the Chief Medical Director or designee that such equipment is necessary for the operation of the conveyance in a manner consistent with safety and in accordance with the standards of licensure of the proper licensing authority.

(3) Payment of amounts for the reasonable costs of providing necessary adaptive equipment and the reasonable costs of necessary repair, replacement and feasible reinstallation of any adaptive equipment deemed necessary under this section, shall be made upon application by the claimant and certification by the Chief Medical Director or designee.

(4) Adaptive equipment, and services thereto, shall not be provided a claimant for more than one conveyance at a time.

(e) *Definition.* The term "adaptive equipment," means generally, that equipment which must be part of or added to a conveyance manufactured for sale to the general public to make it safe for use by the claimant and to assist him or her in meeting the applicable standards of licensure of the proper licensing authority.

(1) With regard to automobiles and similar vehicles the term includes a basic automatic transmission as to a claimant who has lost or lost the use of a limb. In addition, the term includes, but is not limited to, power steering, power brakes, power window lifts and power seats. The term also includes air-conditioning equipment when such equipment is necessary to the health and safety of the veteran and to the safety of others, and special equipment necessary to assist the eligible person into or out of the automobile or other conveyance, regardless of whether the automobile or other conveyance is to be operated by the eligible person or is to be operated for such person by another person; and any modification of the interior space of the automobile or other conveyance if needed because of the physical condition of such person in order for such person to enter or operate the vehicle.

(2) With regard to automobiles and similar vehicles the term includes such items of equipment as the Chief Medical Director may, by directive, specify as ordinarily necessary for any of the classes of losses specified in paragraph (b) of this section and for any combination of such losses. Such specifications of equipment may include a limit on the financial assistance to be pro-

vided based on judgment and experience.

(3) The term also includes other equipment which the Chief Medical Director or designee may deem necessary in an individual case.

[36 FR 7588, Apr. 22, 1971, as amended at 38 FR 14370, June 1, 1973; 40 FR 37037, Aug. 25, 1975; 41 FR 58875, Dec. 23, 1976; 43 FR 4423, Feb. 2, 1978; 44 FR 22721, Apr. 17, 1979]

§ 3.809 Specially adapted housing.

A certificate of eligibility for assistance in acquiring specially adapted housing may be extended to a veteran if the following requirements are met:

(a) *Service.* Active military, naval or air service after April 20, 1898, is required. Benefits are not restricted to veterans with wartime service.

(b) *Disability.* The disability must have been incurred or aggravated as the result of service as indicated in paragraph (a) of this section and the veteran must be entitled to compensation for permanent and total disability due to:

(1) The loss, or loss of use, of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair, or

(2) Blindness in both eyes, having only light perception, plus the anatomical loss or loss of use of one lower extremity, or

(3) The loss or loss of use of one lower extremity together with residuals of organic disease or injury which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

(4) The loss or loss of use of one lower extremity together with the loss of loss of use of one upper extremity which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

(c) *Duplication of benefits.* The assistance referred to in this section will not be available to any veteran more than once.

(d) *"Preclude locomotion."* This term means the necessity for regular and constant use of a wheelchair, braces, crutches or canes as a normal mode of locomotion although occasional locomotion by other methods may be possible. (38 U.S.C. 801, 804)

[26 FR 1606, Feb. 24, 1961, as amended at 34 FR 9560, June 18, 1969; 43 FR 14018, Apr. 4, 1978]

CROSS REFERENCE: Assistance to certain disabled veterans in acquiring specially adapted housing. See §§ 36.4400 through 36.4410 of this chapter.

§ 3.810 Clothing allowance.

(a) A veteran whose service-connected disability is compensable under laws administered by the Veterans Administration is entitled, upon application therefor, to an annual clothing allowance as specified in 38 U.S.C. 362 (payable in a lump sum).

(1) Where a Veterans Administration examination or hospital or examination report from a facility specified in § 3.326(c) discloses that the veteran wears or uses certain prosthetic or orthopedic appliances which tend to wear or tear clothing (including a wheelchair) because of such disability and such disability is the loss or loss of use of a hand or foot compensable at a rate specified in § 3.350 (a), (b), (c), (d), or (f)(1); or

(2) Where the Chief Medical Director or designee certifies that because of such disability a prosthetic or orthopedic appliance is worn or used which tends to wear or tear the veteran's clothing. For the purposes of this paragraph "appliance" includes a wheelchair.

(b) Effective August 1, 1972, the initial lump sum clothing allowance is due and payable for veterans meeting the eligibility requirements of paragraph (a) of this section as of that date. Subsequent annual payments for those meeting the eligibility requirements of paragraphs (a) of this section will become due on the anniversary date thereafter, both as to initial claims and recurring payments under previously established entitlement.

(c)(1) Except as provided in paragraph (c)(2) of this section, the application for clothing allowance must be filed within 1 year of the anniversary date (August 1) for which entitlement is initially established, otherwise, the application will be acceptable only to effect payment of the clothing allow-

ance becoming due on any succeeding anniversary date for which entitlement is established, provided the application is filed within 1 year of such date. The 1-year period for filing application will include the anniversary date and terminate on July 31 of the following year.

(2) Where the initial determination of service connection for the qualifying disability is made subsequent to an anniversary date for which entitlement is established, the application for clothing allowance may be filed within 1 year from the date of notification to the veteran of such determination.

[37 FR 19134, Sept. 19, 1972, as amended at 39 FR 2362, Jan. 21, 1974; 39 FR 9541, Mar. 12, 1974; 40 FR 37038, Aug. 25, 1975; 41 FR 55875, Dec. 23, 1976]

§ 3.811 Lump-sum payment under Public Law 93-177.

(a) Any veteran who was dishonorably discharged from the United States Army as the result of an incident that occurred in Brownsville, Texas on August 13, 1906, and who was not subsequently ruled eligible for reenlistment in the Army by a Special Army Tribunal decision dated April 6, 1910, shall, upon application, be paid the sum of $25,000.

(b) Any unremarried widow of any veteran described in paragraph (a) of this section shall, upon application, be paid the sum of $10,000 if the veteran died prior to December 6, 1973, or if the veteran failed to file an application for payment under paragraph (a) of this section after that date and prior to his death.

(c) Applications for payment under paragraphs (a) and (b) of this section and any required evidence will be filed with the Veterans Administration. The application must be filed within 5 years after December 6, 1973.

(d) When eligibility to benefits under this section is established the Veterans Administration will certify entitlement of the veteran or widow to the Department of the Army for payment.

[39 FR 9542, Mar. 12, 1974]

Guardianship and Institutional Awards

§ 3.850 General.

(a) Payment of benefits to a duly recognized fiduciary may be made on behalf of a person who is mentally incompetent or who is a minor; or, payment may be made directly to the beneficiary or to a relative or other person for the use of the beneficiary, regardless of legal disability, when it is determined to be in the best interest of the beneficiary by the Veterans Services Officer. (38 U.S.C. 3202)

(1) Unless otherwise contraindicated by evidence of record payment will be made direct to the following classes of minors without any referral to the Veterans Services Officer:

(i) Those who are serving in or have been discharged from the military forces of the United States; and

(ii) Those who qualify for survivors benefits as a surviving spouse.

(2) Unless otherwise contraindicated by evidence of record, immediate payment of benefits may be made to the spouse of an incompetent veteran having no guardian for the use of the veteran and his or her dependents prior to referral to the Veterans Services Officer. (Sec. 13.57 of this chapter.)

(b) When payments have been discontinued or withheld from a fiduciary, benefits may be temporarily paid to the person having custody of the minor or incompetent.

(c) Where a child is in the custody of a natural, adoptive or stepparent, benefits payable on behalf of such child may be paid to the parent as custodian of the child.

(d) Benefits due a minor or incompetent adult Indian who is a recognized ward of the Goverment, for whom no fiduciary has been appointed, may be paid to the proper officer of the Indian Service designated by the Secretary of the Interior to receive funds for said person.

[26 FR 1606, Feb. 24, 1961, as amended at 27 FR 5431, June 8, 1962; 38 FR 29076, Oct. 19, 1973; 39 FR 34532, Sept. 26, 1974; 40 FR 36329, Aug. 20, 1975; 41 FR 12656, Mar. 26, 1976; 45 FR 27436, Apr. 23, 1980]

§ 3.851 St. Elizabeths Hospital, Washington, D.C.

Benefits due or becoming due any person who is a patient at St. Elizabeths Hospital will be paid to a duly appointed fiduciary of such person. The benefits payable to a veteran who has no spouse, child, or dependent parent will be paid by an institutional award in accordance with § 3.852 if there is no such fiduciary. Benefits payable to veterans' dependents who are patients at this hospital will be paid direct or to a fiduciary of such dependent, except that any awards now being paid to the superintendent will be continued while such dependent remains a patient.

[39 FR 34532, Sept. 26, 1974, as amended at 45 FR 27436, Apr. 23, 1980]

§ 3.852 Institutional awards.

(a) When an incompetent veteran entitled to pension, compensation or retirement pay is a patient in a hospital or other institution, payments on his (or her) account may be made to the chief officer of a Veterans Administration or non-Veterans Administration institution:

(1) When no fiduciary has been appointed or when payments to an unsatisfactory fiduciary have been discontinued;

(2) When the Veterans Services Officer certifies that a fiduciary is not furnishing the chief officer funds required for the veteran's comforts and desires not otherwise provided by the institution;

(3) When a fiduciary requests that an institutional award be made or continued, and the Veterans Services Officer approves the request.

(b) In an institutional award of pension, compensation or retirement pay there may be paid to the chief officer of a non-Veterans Administration institution on behalf of the veteran an amount not in excess of $60 per month. An institutional award of disability pension will not exceed $25 per month if the award is apportionable under § 3.454(a). (38 U.S.C. 210(c))

(1) All sums, otherwise payable in excess of the institutional award, apportionments or awards to fiduciaries, will be deposited in Personal Funds of Patients.

(2) There may be paid on behalf of a veteran, having no spouse, child or dependent parent and receiving care in a non-Veterans Administration institution, such additional amount, within the limit of the total payable and as may be certified by the Veterans Services Officer, needed for the benefit of the veteran and to pay for his (or her) care and maintenance. Moneys on deposit in Personal Funds of Patients will not be used for this purpose except as authorized by the Veterans Services Officer under § 13.72 of this chapter.

(3) If the veteran has dependents, or more is payable under his (or her) rating, or there are funds to his (or her) credit in "Funds Due Incompetent Beneficiaries," such additional amount as may be needed will be allowed on the basis of a certification by the chief officer with respect to need and amount required.

(c) Where there arises a situation as enumerated in paragraph (a)(1) of this section, apportionment to dependents will be under § 3.451.

(d) There will be paid to the chief officer of a Veterans Administration institution all sums otherwise payable in excess of apportionments or awards to fiduciaries.

(e) Any excess funds held by the chief officer of a non-Veterans Administration institution, not necessary for the benefit of the veteran, will be returned to the Veterans Administration or to a fiduciary, if one is serving. Upon death of a veteran with no surviving heirs, excess funds will be returned to the Veterans Administration.

[26 FR 1606, Feb. 24, 1961, as amended at 27 FR 5431, June 8, 1962; 38 FR 29076, Oct. 19, 1973; 39 FR 12100, Apr. 3, 1974; 40 FR 36329, Aug. 20, 1975; 45 FR 27436, Apr. 23, 1980]

CROSS REFERENCES: Veterans Benefits Apportionable. See § 3.452. Payment to Chief Officer of Institution. See § 13.61 of this chapter.

§ 3.853 [Reserved]

§ 3.854 Limitation on payments for minor.

Benefits will not be authorized to a fiduciary recognized or appointed for a child, by reason of its minority, for any period subsequent to the day preceding the date on which the child will attain its majority under the law of the State in which the child resides. Payments on or after that date, if otherwise in order, will be made direct to the child, if competent, or, if incompetent and direct payment under § 3.850 is not in order, to a fiduciary appointed for the child as a mentally incompetent adult.

[39 FR 34533, Sept. 26, 1974]

§ 3.855 Beneficiary rated or reported incompetent.

(a) *General.* Payments being made directly to a beneficiary who is or may be incompetent will not be routinely suspended pending certification of a fiduciary (or a recommendation that payments should be paid directly to the beneficiary) by the Veterans Services Officer or development of the issue of incompetency.

(b) *Application.* This policy applies to all cases including (but not limited to) the following:

(1) Notice or evidence is received that a guardian has been appointed for the beneficiary.

(2) Notice or evidence is received that the beneficiary has been committed to a hospital.

(3) The beneficiary has been rated incompetent by the Veterans Administration.

[42 FR 2069, Jan. 10, 1977]

§ 3.856 Change of name of female fiduciary.

If a female fiduciary receiving benefits in such capacity marries or is restored to her former name by divorce decree, her statement setting forth her present name may be accepted.

[39 FR 34533, Sept. 26, 1974]

§ 3.857 Children's benefits to fiduciary of widow or widower.

Where children are separated from the widow or widower by reason of her (or his) incompetency, no apportionment is required. All amounts payable on behalf of the children may be paid to the fiduciary of the widow or widower provided the fiduciary is adequately taking care of the needs of the children from the beneficiary's estate voluntarily or pursuant to a decree of court.

[39 FR 12100, Apr. 3, 1974]

FORFEITURE

§ 3.900 General.

(a) Forfeiture of benefits based on one period of service does not affect entitlement to benefits based on a period of service beginning after the offense causing the prior forfeiture.

(b)(1) Except as provided in paragraph (b)(2) of this section, any offense committed prior to January 1, 1959, may cause a forfeiture and any forfeiture in effect prior to January 1, 1959, will continue to be a bar on and after January 1, 1959. (Section 3, Public Law 85-857).

(2) Effective September 2, 1959, forfeiture of benefits may not be declared except under the circumstances set forth in § 3.901(d), § 3.902(d), or § 3.903. Forfeitures declared before September 2, 1959, will continue to be a bar on and after that date. (38 U.S.C. 3503(d) and 3505).

(c) Pension or compensation payments are not subject to forfeiture because of violation of hospital rules.

(d) When the person primarily entitled has forfeited his rights by reason of fraud or a treasonable act determination as to the rights of any dependents of record to benefits under § 3.901(c) or § 3.902(c) may be made upon receipt of an application. (38 U.S.C. 3503(b) and 38 U.S.C. 3504(b))

[26 FR 1607, Feb. 24, 1961, as amended at 27 FR 8590, Aug. 28, 1962]

§ 3.901 Fraud.

(a) *Definition.* An act committed when a person knowingly makes or causes to be made or conspires, combines, aids, or assists in, agrees to, arranges for, or in any way procures the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper,

concerning any claim for benefits under any of the laws administered by the Veterans Administration (except laws relating to insurance benefits).

(b) *Effect on claim.* For the purposes of paragraph (d) of this section, any person who commits fraud forfeits all rights to benefits under all laws administered by the Veterans Administration other than laws relating to insurance benefits.

(c) *Forfeiture before September 2, 1959.* Where forfeiture for fraud was declared before September 2, 1959, in the case of a veteran entitled to disability compensation, the compensation payable except for the forfeiture may be paid to his wife, children and parents. The total amount payable will be the lesser of these amounts:

(1) Service-connected death benefit payable.

(2) Amount of compensation payable but for the forfeiture.

No benefits are payable to any person who participated in the fraud causing the forfeiture.

(d) *Forfeiture after September 1, 1959.* After September 1, 1959, forfeiture by reason of fraud may be declared only

(1) Where the person was not residing or domiciled in a State as defined in § 3.1(i) at the time of commission of the fraudulent act; or

(2) Where the person ceased to be a resident of or domiciled in a State as defined in § 3.1(i) before expiration of the period during which criminal prosecution could be instituted; or

(3) The fraudulent act was committed in the Philippine Islands.

Where the veteran's rights have been forfeited, no part of his benefit may be paid to his dependents. (38 U.S.C. 3503 (a), (d), (e))

(e) *Remission of forfeitures imposed prior to September 2, 1959.* Where it is determined that a forfeiture for fraud which was imposed prior to September 2, 1959, would not be imposed under the law and regulation in effect on and after September 2, 1959, the forfeiture shall be remitted effective June 30, 1972. Benefits to which a person becomes eligible by virtue of the remission, upon application therefor, shall be awarded effective as provided by § 3.114. (38 U.S.C. 3503; Pub. L. 92-328, 86 Stat. 393; effective June 30, 1972).

[27 FR 8590, Aug. 28, 1962, as amended at 37 FR 19134, Sept. 19, 1972]

§ 3.902 Treasonable acts.

(a) *Definition.* An act of mutiny, treason, sabotage or rendering assistance to an enemy of the United States or of its allies.

(b) *Effect on claim.* For the purposes of paragraph (d) of this section, any person determined by the Veterans Administration to be guilty of a treasonable act forfeits all gratuitous benefits under laws administered by the Veterans Administration which he may be receiving or would have been entitled to receive in the future.

(c) *Forfeiture before September 2, 1959.* Where forfeiture for treasonable acts was declared before September 2, 1959, the Administrator may pay any part of benefits so forfeited to the dependents of the person except that the amount may not be in excess of that which the dependent would be entitled to as a death benefit.

(1) *Compensation.* Whenever a veteran entitled to disability compensation has forfeited his right, any part of the compensation payable except for the forfeiture may be paid to his wife, children and parents. The total amount payable will be the lesser of these amounts:

(i) Service-connected death benefit payable.

(ii) Amount of compensation payable but for the forfeiture.

No benefits are payable to any person participating in the treasonable act causing the forfeiture.

(2) *Pension.* Whenever a veteran entitled to pension has forfeited his right, any part of the pension payable except for the forfeiture provision may be paid to his wife, and children. The total amount payable will be the lesser of these amounts:

(i) Non-service-connected death benefit payable.

(ii) Amount of pension being paid the veteran at the time of forfeiture.

No benefits are payable to any person who participated in the treasonable act causing the forfeiture.

(d) *Forfeiture after September 1, 1959.* After September 1, 1959, forfeiture by reason of a treasonable act may be declared only

(1) Where the person was not residing or domiciled in a State as defined in § 3.1(i) at the time of commission of the act; or

(2) Where the person ceased to be a resident of or domiciled in a State as defined in § 3.1(i) before expiration of the period during which criminal prosecution could be instituted; or

(3) The treasonable act was committed in the Philippine Islands.

No part of the benefits forfeited by the person primarily entitled shall be paid to any dependent. (38 U.S.C. 3503(d), (e), 3504)

(e) *Children.* A treasonable act committed by a child or children, regardless of age, who are in the widow's custody and included in an award to her will not affect the award to the widow.

[27 FR 8590, Aug. 28, 1962]

§ 3.903 Subversive activities.

(a) *Definition.* Any offense for which punishment is prescribed:

(1) In title 18, United States Code, sections 792, 793, 794, 798, 2381 through 2385, 2387 through 2390, and chapter 105;

(2) In the Uniform Code of Military Justice, Articles 94, 104 and 106 (10 U.S.C. 894, 904, and 906);

(3) In the following sections of the Atomic Energy Act of 1954: Sections 222 through 226 (42 U.S.C. 2272-2276); and

(4) In section 4 of the Internal Security Act of 1950 (50 U.S.C. 783). (Pub. L. 92-128; 85 Stat. 347)

(b) *Effect on claim.* (1) Any person who is convicted after September 1, 1959, of subversive activities shall from and after the date of commission of such offense have no right to gratuitous benefits (including the right to burial in a national cemetery) under laws administered by the Veterans Administration based on periods of military, naval, or air service commencing before the date of the commission of such offense and no other person shall be entitled to such benefits on account of such person.

(2) The Attorney General will notify the Veterans Administration in each case in which a person is indicted or convicted of an offense listed in paragraphs (a) (1), (3), and (4) of this section. The Secretary of Defense or the Secretary of the Treasury, as may be appropriate, will notify the Veterans Administration in each case in which a person is convicted of an offense listed in paragraph (a)(2) of this section.

(c) *Presidential pardon.* Where any person whose right to benefits has been so terminated is granted a pardon of the offense by the President of the United States, the right to such benefits shall be restored as of the date of such pardon, if otherwise eligible. (38 U.S.C. 3505)

[27 FR 8591, Aug. 28, 1962, as amended at 38 FR 4511, Feb. 15, 1973; 38 FR 30106, Nov. 1, 1973]

§ 3.904 Effect of forfeiture after veteran's death.

(a) *Fraud.* Whenever a veteran has forfeited his right by reason of fraud his surviving dependents upon proper application may be paid pension, compensation, or dependency and indemnity compensation, if otherwise eligible. No benefits are payable to any person who participated in the fraud causing the forfeiture. (38 U.S.C. 3503(c))

(b) *Treasonable acts.* Death benefits may be authorized as provided in paragraph (a) of this section where forfeiture by reason of a treasonable act was declared before September 2, 1959. Otherwise, no award of gratuitous benefits (including the right to burial in a national cemetery) may be made to any person based on any period of service commencing before the date of commission of the offense which resulted in the forfeiture. (38 U.S.C. 3504(c))

(c) *Subversive activities.* Where the veteran was convicted of subversive activities after September 1, 1959, no award of gratuitous benefits (including the right to burial in a national cemetery) may be made to any person based on any period of service commencing before the date of commis-

sion of the offense which resulted in the forfeiture unless the veteran had been granted a pardon of the offense by the President of the United States. If pardoned, the veteran's surviving dependents upon proper application may be paid pension, compensation or dependency and indemnity compensation, if otherwise eligible, and the right to burial in a national cemetery is restored. (38 U.S.C. 3505(a))

[27 FR 8591, Aug. 28, 1962, as amended at 38 FR 30106, Nov. 1, 1973; 39 FR 13970, Apr. 19, 1974]

§ 3.905 Declaration of forfeiture or remission of forfeiture.

(a) *Jurisdiction.* At the regional office level, except in VA Regional Office, Manila, Philippines, the Chief Attorney is authorized to determine whether the evidence warrants formal consideration as to forfeiture. In the Manila Regional Office the Adjudication Officer is authorized to make this determination. Submissions may also be made by the director of a service, the Chairman, Board of Veterans Appeals, and the General Counsel. Jurisdiction to determine whether the claimant or payee has forfeited the right to gratuitous benefits or to remit a prior forfeiture is vested in the Director, Compensation and Pension Service, and personnel to whom authority has been delegated under the provisions of § 3.100(c).

(b) *Fraud or treasonable acts.* Forfeiture of benefits under § 3.901 or § 3.902 will not be declared until the person has been notified by the Chief Attorney or, in VA Regional Office, Manila, Philippines, the Adjudication Officer, of the right to present a defense. Such notice shall consist of a written statement sent to the person's latest address of record setting forth the following:

(1) The specific charges against the person;

(2) A detailed statement of the evidence supporting the charges, subject to regulatory limitations on disclosure of information;

(3) Citation and discussion of the applicable statute;

(4) The right to submit a statement or evidence within 60 days, either to rebut the charges or to explain the person's position;

(5) The right to a hearing within 60 days, with representation by counsel of the person's own choosing, and that no expenses incurred by a claimant, counsel or witness will be paid by the Veterans Administration.

(c) *Subversive activities.* Automatic forfeiture of benefits under § 3.903 will be effectuated by an official authorized to declare a forfeiture as provided in paragraph (a) of this section.

(d) *Finality of decisions.* A decision of forfeiture is subject to the provisions of § 3.104(a) and §§ 19.153 and 19.154 of this chapter. The officials authorized to file administrative appeals and the time limit for filing such appeals are set forth in § 19.124 of this chapter.

(e) *Remission of forfeiture.* In event of remission of forfeiture under § 3.901(e), any amounts paid as an apportionment(s) during periods of the previously forfeited beneficiary's reentitlement will be offset.

[28 FR 2234, Mar. 7, 1963, as amended at 29 FR 7547, June 12, 1964; 37 FR 19134, Sept. 19, 1972; 39 FR 13970, Apr. 19, 1974]

CROSS REFERENCES: Effective dates; forfeiture. See § 3.400(m).

Reductions and discontinuances; fraud. See § 3.500(k).

Reductions and discontinuances; treasonable acts or subversive activities. See § 3.500(s).

Adjustments and resumptions. See § 3.669.

Burial benefits. See § 3.1609.

PROTECTION

§ 3.950 Helpless children; Spanish-American and prior wars.

Marriage is not a bar to the payment of pension or compensation to a helpless child under an award approved prior to April 1, 1944. The presumption, arising from the fact of marriage, that helplessness has ceased may be overcome by positive proof of continuing helplessness. As to awards approved on or after April 1, 1944, pension or compensation may not be paid to a helpless child who has married.

[26 FR 1608, Feb. 24, 1961]

§ 3.951 Preservation of disability ratings.

A disability which has been continuously rated at or above any evaluation of disability for 20 or more years for compensation purposes under laws administered by the Veterans Administration will not be reduced to less than such evaluation except upon a showing that such rating was based on fraud. Likewise, a rating of permanent total disability for pension purposes which has been in force for 20 or more years will not be reduced except upon a showing that the rating was based on fraud. The 20-year period will be computed from the effective date of the evaluation to the effective date of reduction of evaluation. (38 U.S.C. 110; Pub. L. 91-32)

[34 FR 11970, July 16, 1969]

§ 3.952 Protected ratings.

Ratings under the Schedule of Disability Ratings, 1925, which were the basis of compensation on April 1, 1946, are subject to modification only when a change in physical or mental condition would have required a reduction under the 1925 schedule, or an increased evaluation has been assigned under the Schedule for Rating Disabilities, 1945 (looseleaf edition), after which time all evaluations will be under the 1945 schedule (loose-leaf edition) only. Such increased evaluations must be of an other than temporary nature (due to hospitalization, surgery, etc.). When a temporary evaluation is involved, the 1925 schedule evaluation will be restored after the period of increase has elapsed unless the permanent residuals would have required reduction under that schedule, or unless an increased evalation would be assignable under a 1945 schedule (loose-leaf edition) rating. In any instance where the changed condition represents an increased degree of disability under either rating schedule but the evaluation provided by the 1945 schedule (loose-leaf edition) is less than the evaluation in effect under the 1925 schedule on April 1, 1946, the 1925 schedule evaluation and award are protected.

[26 FR 12766, Dec. 30, 1961]

§ 3.953 Public Law 85-56 and Public Law 85-857.

(a) *In receipt of or entitled to receive benefits on December 31, 1958.* Any person receiving or entitled to receive benefits under any public law administered by the Veterans Administration on December 31, 1958, may, except where there was fraud, clear and unmistakable error of fact or law, or misrepresentation of material facts, continue to receive such benefits as long as the conditions warranting such payment under those laws continue. The greater benefit under the previous law or the corresponding section of title 38, United States Code, will be paid in the absence of an election to receive the lesser benefit. (Section 10, Pub. L. 85-857.)

(b) *Emergency officers' retirement pay.* Any person who was receiving, or entitled to receive, emergency officers' retirement pay, or other privileges or benefits as a retired emergency officer of World War I, on December 31, 1958, under the laws in effect on that day, will, except where there was fraud, clear and unmistakable error as to conclusion of fact or law, or misrepresentation of material facts, continue to receive, or be entitled to receive, emergency officers' retirement pay at the rate otherwise payable on December 31, 1958, and such other privileges and benefits, so long as the conditions warranting such pay, privileges, and benefits under those laws continue. (Section 11, Pub. L. 85-857.)

(c) *Service connection established under prior laws.* In the absence of fraud, misrepresentation of material facts or clear and unmistakable error, all cases where compensation was payable on December 31, 1957, for disability service connected under prior laws, repealed by Pub. L. 85-56, including those service connected under the second proviso of section 200 of the World War Veterans' Act, 1924, as amended, are protected by section 2316(b), Pub. L. 85-56 and section 10, Pub. L. 85-857 as to both service connection and rate of compensation, so long as the conditions warranting such status and rate continue. Any disability so service connected may be evaluated under the Schedule for Rating

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Disabilities, 1945 (loose-leaf edition) and benefits awarded on the basis thereof, as well as special monthly compensation under 38 U.S.C. 314, provided such action results in compensation payable at a rate equal to or higher than that payable on December 31, 1957. Where a changed physical condition warrants reevaluation of service-connected disabilities, compensation will be awarded under the provisions of 38 U.S.C. 314.

[26 FR 1608, Feb. 24, 1961, as amended at 26 FR 8561, Sept. 13, 1961; 26 FR 12766, Dec. 30, 1961]

§ 3.954 Burial allowance.

When any person who had a status under any law in effect on December 31, 1957, which afforded entitlement to burial benefits dies, the burial allowance will be paid, if otherwise in order, even though such status does not meet the service requirements of 38 U.S.C. Ch. 23. (38 U.S.C. 905)

[26 FR 1608, Feb. 24, 1961]

§§ 3.955—3.956 [Reserved]

§ 3.957 Service connection.

Service connection for any disability or death granted or continued under title 38, United States Code, which has been in effect for 10 or more years will not be severed except upon a showing that the original grant was based on fraud or it is clearly shown from military records that the person concerned did not have the requisite service or character of discharge. The 10-year period will be computed from the effective date of the Veterans Administration finding of service connection to the effective date of the rating decision severing service connection, after compliance with § 3.105(d). The protection afforded in this section extends to claims for dependency and indemnity compensation or death compensation. (38 U.S.C. 359)

[33 FR 15286, Oct. 15, 1968]

§ 3.958 Federal employees' compensation cases.

Any award approved prior to September 13, 1960, authorizing Veterans Administration benefits concurrently with an award of benefits under the Federal Employees' Compensation Act based on a finding that the same disability or death was due to civilian employment is not affected by the prohibition against concurrent awards contained in 5 U.S.C. 8116(b).

[41 FR 20408, May 18, 1976]

§ 3.959 Tuberculosis.

Any veteran who, on August 19, 1968, was receiving or entitled to receive compensation for active or inactive (arrested) tuberculosis may receive compensation under 38 U.S.C. 314(q) and 356 as in effect before August 20, 1968. (Pub. L. 90-493; 82 Stat. 809)

[33 FR 16275, Nov. 6, 1968]

§ 3.960 Section 306 and old-law pension protection.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, any person eligible to elect improved pension under § 3.711 or 3.712 who is in receipt of section 306 or old-law pension on December 31, 1978, shall in the absence of an election to receive improved pension, continue to receive such pension at the monthly rate payable on December 31, 1978.

(b) *Termination.* Pension payable under paragraph (a) of this section shall be terminated for any one of the following reasons:

(1) A veteran pensioner ceases to be permanently and totally disabled.

(2) A surviving spouse pensioner ceases to meet the definition of "surviving spouse" in 38 U.S.C. 101(3).

(3) A child pensioner ceases to meet the definition of "child" in 38 U.S.C. 101(4).

(4) A section 306 pensioner's countable annual income, determined under §§ 3.250 to 3.270, exceeds the applicable amount stated in § 3.26(a).

(5) An old-law pensioner's countable annual income determined under §§ 3.250 to 3.270 exceeds the applicable amount stated in § 3.26(b).

(6) A section 306 pensioner has a net worth of such size that it is reasonable that some part of it be consumed for the pensioner's maintenance. Evaluation of net worth shall be made under § 3.263.

(c) *Reduction.* The pension rate payable under paragraph (a) of this section shall be reduced by the amount of any additional pension payable by reason of a dependent upon the loss of such dependent. A veteran or surviving spouse who no longer has any dependents shall not continue to receive either section 306 pension or old-law pension if countable annual income exceeds the appropriate rate in § 3.26(a)(1) or (2) or (b)(1).

(d) *Finality of termination.* Termination of section 306 pension or old-law pension for one of the reasons listed in paragraph (b) of this section precludes a person from thereafter establishing entitlement under any other pension program except the improved pension program. (Sec. 306 of Pub. L. 95-588, 92 Stat. 2497)

[44 FR 45944, Aug. 6, 1979]

§ 3.961 Claims pending on December 31, 1978.

A claim for pension filed by a veteran, surviving spouse or child which is pending in the Veterans Administration on December 31, 1978, shall be adjudicated under title 38, United States Code as in effect on December 31, 1978. Any benefits determined to be payable are subject to § 3.960. (Sec. 306(c) of Pub. L. 95-588, 92 Stat. 2497)

[44 FR 45944, Aug. 6, 1979]

§ 3.962 Claims filed after December 31, 1978.

(a) *No entitlement prior to January 1, 1979.* A claim for pension filed after December 31, 1978, by a veteran who became totally and permanently disabled after December 31, 1978, or by a surviving spouse or child based on the death of a veteran occurring after December 31, 1978, shall be adjudicated under the provisions of title 38, United States Code as in effect on January 1, 1979 or thereafter.

(b) *Entitlement prior to January 1, 1979.* A claim for pension filed by a veteran after December 31, 1978, and within 1 year after the date on which the veteran became permanently and totally disabled, shall be adjudicated under the provisions of title 38, United States Code as in effect on December 31, 1978, if the veteran became permanently and totally disabled prior to January 1, 1979. A claim for pension filed by a surviving spouse or by a child after December 31, 1978, and within 1 year after the date of death of the veteran through whose relationship claim is made shall be adjudicated under the provisions of title 38, United States Code as in effect on December 31, 1978, if the veteran's death occurred before January 1, 1979. Any benefits determined to be payable to a veteran, surviving spouse or child are subject to § 3.960. (Sec. 306(c) of Pub. L. 95-588, 92 Stat. 2497).

[44 FR 45944, Aug. 6, 1979]

ACCRUED

§ 3.1000 Under 38 U.S.C. 3021.

(a) *Basic entitlement.* Except as provided in §§ 3.1001 and 3.1008, where death occurred on or after December 1, 1962, periodic monetary benefits (other than insurance and servicemen's indemnity) authorized under laws administered by the Veterans Administration, to which a payee was entitled at his death under existing ratings or decisions, or those based on evidence in the file at date of death, and due and unpaid for a period not to exceed 1 year prior to the last date of entitlement as provided in § 3.500(g) will, upon the death of such person, be paid as follows:

(1) Upon the death of a veteran to the living person first listed as follows:

(i) His spouse;

(ii) His children (in equal shares);

(iii) His dependent parents (in equal shares) or the surviving parent.

(2) Upon the death of a widow or remarried widow, to the veteran's children.

(3) Upon the death of a child, to the surviving children of the veteran entitled to death pension, compensation, or dependency and indemnity compensation.

(4) In all other cases, only so much of the accrued benefit may be paid as may be necessary to reimburse the person who bore the expense of last sickness or burial. (See § 3.1002.)

(b) *Apportionments.* (1) Upon the death of a person receiving an apportioned share of benefits payable to a

veteran, all or any part of such unpaid amount is payable to the veteran or to any other dependent or dependents of the veteran. (38 U.S.C. 3021(a)(1))

(2) Where at the date of death of the veteran an apportioned share is being paid to or has been withheld on behalf of another person, the apportioned amount remaining unpaid for periods prior to the last day of the month before the veteran's death is payable to the apportionee.

(3) Where the accrued death pension, compensation or dependency and indemnity compensation was payable for a child as an apportioned share of the widow's benefit, payment will be made under the provisions of paragraph (a)(4) of this section, on the expenses of such deceased child's last sickness or burial.

(c) *Claims and evidence.* Application for accrued benefits must be filed within 1 year after the date of death. A claim for death pension, compensation, or dependency and indemnity compensation, by an apportionee, widow, child or parent is deemed to include claim for any accrued benefits. (See § 3.152(b)).

(1) If a claimant's application is incomplete, the claimant will be notified of the evidence necessary to complete the application. If such evidence is not received within 1 year from the date of such notification, no accrued benefits may be paid.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class. (38 U.S.C. 3021(c); 3012(b), Public Law 87-825)

(d) *Definitions.* (1) "Spouse" means the widow or widower of the veteran, whose marriage meets the requirements of § 3.1(j) or § 3.52. Where the marriage meets the requirements of § 3.1(j) date of marriage and continuous cohabitation are not factors.

(2) "Child" is as defined in § 3.57 and includes an unmarried child who became permanently incapable of self-support prior to attaining 18 years of age as well as an unmarried child over the age of 18 but not over 23 years of age, who was pursuing a course of instruction within the meaning of § 3.57 at the time of the payee's death. However, upon the death of a child in receipt of death pension, compensation, or dependency and indemnity compensation, any accrued will be payable to the surviving child or children of the veteran entitled to death pension, compensation, or dependency and indemnity compensation. Upon the death of a child, another child who has elected dependents' educational assistance under 38 U.S.C. chapter 35 may receive accrued death pension, compensation, or dependency and indemnity compensation, payable on behalf of the deceased child for periods prior to the commencement of benefits under that chapter.

(3) "Dependent parent" is as defined in § 3.59: *Provided,* That the mother or father was dependent within the meaning of § 3.250 at the date of the veteran's death.

(4) "Evidence in the file at date of death," as used in paragraph (a) of this section, will be considered to have been met when there is on file at the date of the veteran's death:

(i) Notwithstanding § 3.200(b) evidence, including uncertified statements, which is essentially complete and of such weight as to establish service connection or degree of disability for disease or injury when substantiated by other evidence in file at date of death or when considered in connection with the identifying, verifying, or corroborative effect of the death certificate.

(ii) In the case of a veteran whose award is subject to reduction by reason of hospital treatment, institutional or domiciliary care by the Veterans Administration, and in the case of a veteran whose award is subject to increase by reason of the existence of dependents, prima facie proof of dependents, or of other factors affecting entitlement, such as statements on the claim for benefits, or allied forms, provided satisfactory evidence is furnished in support of the claim for accrued benefits. The provisions of this subdivision are not applicable to original awards of accrued benefits.

(e) *Subsistence allowance.* Subsistence allowance under the provisions of 38 U.S.C. ch. 31 remaining due and unpaid at the date of the veteran's death, is payable under the provisions of this section.

(f) *Dependents' educational assistance.* Educational assistance allowance or special restorative training allowance under 38 U.S.C. ch. 35, remaining due and unpaid at the date of death of an eligible widow or widower or eligible child is payable to a child or children of the veteran (see paragraphs (a)(2), (a)(3) and (d)(2) of this section), or on the expenses of last sickness and burial (see paragraph (a)(4) of this section.) Benefits due and unpaid at the date of death of an eligible wife or husband are payable only on the expenses of last sickness and burial (see paragraph (a)(4) of this section).

(g) *Veterans educational assistance.* Educational assistance allowance under 38 U.S.C. ch. 34 remaining due and unpaid at the date of the veteran's death is payable under the provisions of this section.

(h) *Clothing allowance.* Clothing allowance under 38 U.S.C. 362 remaining due and unpaid at the date of the veteran's death is payable under the provisions of this section.

[26 FR 1608, Feb. 24, 1961, as amended at 27 FR 11892, Dec. 1, 1962; 30 FR 11389, Sept. 8, 1965; 31 FR 4790, Mar. 22, 1966; 34 FR 840, Jan. 18, 1969; 39 FR 15126, May 1, 1974]

§ 3.1001 Hospitalized competent veterans.

The provisions of this section apply only to the payment of amounts actually withheld on a running award under § 3.551(b) which are payable in a lump sum after the veteran's death.

(a) *Basic entitlement.* Where an award of disability pension for a competent veteran without dependents was reduced because of hospital treatment or institutional or domiciliary care by the Veterans Administration and the veteran dies while receiving such treatment or care or before payment of amounts withheld, the lump sum is payable to the living person first listed as follows:

(1) The veteran's spouse, as defined in § 3.1000(d)(1);

(2) The veteran's children (in equal shares), as defined in § 3.57 but without regard to their age or marital status;

(3) The veteran's dependent parents (in equal shares), or the surviving dependent parent, as defined in § 3.1000(d)(3);

(4) In all other cases, only so much of the lump sum may be paid as may be necessary to reimburse a person who bore the expenses of last sickness or burial. (See § 3.1002.)

(b) *Claim.* Applications must be filed with the Veterans Administration within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.

(1) There is no time limit on the retroactive period of an award or for furnishing evidence.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.

(c) *Lump sum withheld after discharge from institution.* The provisions of paragraphs (a) and (b) of this section will apply in the event of the death of any veteran prior to receiving a lump sum which was withheld because treatment or care was terminated against medical advice or as the result of disciplinary action. (38 U.S.C. 3203).

[26 FR 1609, Feb. 24, 1961, as amended at 27 FR 5539, June 12, 1962; 27 FR 8177, Aug. 16, 1962; 27 FR 11893, Dec. 1, 1962; 39 FR 15126, May 1, 1974]

§ 3.1002 Political subdivisions of United States.

No part of any accrued benefits will be used to reimburse any political subdivision of the United States for expenses incurred in the last sickness or burial of any beneficiary. (See § 3.1(o)). (38 U.S.C. 3021(b) and 3202(d))

[39 FR 15126, May 1, 1974]

§ 3.1003 Returned and canceled checks.

For the purposes of §§ 3.1000 and 3.1008, where the payee of a check for benefits has died on or after the last day of the period covered by the check, and the check is returned and canceled, the amount represented by the check which is payable as limited by § 3.500(g), or any amount recovered after improper negotiation of such a check will be payable to the living person or persons in the order of precedence listed. This does not apply to checks for lump sums representing amounts withheld under § 3.551(b) or § 3.557 which will be subject to the provisions of § 3.1001 or § 3.1007, as applicable. (38 U.S.C. 3022)

(a) There is no time limit for the date of filing claim, or the retroactive period covered by the award, or the date of receipt of evidence.

(b) The fact that one or more persons having a higher order of precedence survived the beneficiary will not preclude payment to a claimant who is otherwise entitled if it is shown that at the time the claim is adjudicated such persons are deceased.

[26 FR 1609, Feb. 24, 1961, as amended at 27 FR 11893, Dec. 1, 1962]

§§ 3.1004—3.1006 [Reserved]

§ 3.1007 Hospitalized incompetent veterans.

Where an award of disability pension for an incompetent veteran without dependents was reduced under § 3.551(b) because of hospitalization, institutional or domiciliary care by the Veterans Administration, or an award of disability pension, compensation or emergency officers' retirement pay was discontinued under § 3.557(b) because the veteran was hospitalized by the United States or a political subdivision and had an estate which equaled or exceeded $1,500, and the veteran dies before payment of amounts withheld or not paid by reason of such care, no part of such amount will be paid to any person. The provisions of this section are applicable to amounts withheld for periods prior to as well as subsequent to the rating of incompetency. The term "dies before payment" includes cases in which a check was issued and the veteran died before negotiating the check. (38 U.S.C. 3203(b))

[39 FR 30349, Aug. 22, 1974]

§ 3.1008 Accrued benefits payable to foreign beneficiaries.

In case of death of the payee of any check in payment of periodic monetary benefits (other than insurance and servicemen's indemnity) accruing under laws administered by the Veterans Administration, while the amount thereof remains in the special deposit account established by Public Law 828, 76th Congress, such amount will be payable under section 3 of that act. (31 U.S.C. 125) However, the accrued amount will be payable only if the person on whose behalf checks were issued and the person claiming the accrued amount have not been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or of its allies.

[26 FR 1609, Feb. 24, 1961]

§ 3.1009 Personal funds of patients.

The provisions of this section are applicable to gratuitous benefits deposited by the Veterans Administration either before, on, or after December 1, 1959, in a personal funds of patients account for an incompetent veteran who was incompetent at the date of death. Where the veteran died after November 30, 1959:

(a) *Eligible persons.* Gratuitous benefits shall be paid to the living person first listed as follows:

(1) His or her spouse, as defined in § 3.1000(d)(1);

(2) His or her children (in equal shares), as defined in § 3.57 but without regard to their age or marital status;

(3) His or her dependent parents (in equal shares) as defined in § 3.59 or the surviving parent, provided that the parent was dependent within the meaning of § 3.250 at the date of the veteran's death.

(4) In all other cases, only so much may be paid as may be necessary to reimburse a person who bore the expense of last sickness or burial. (See § 3.1002.) (38 U.S.C. 3202(d))

(b) *Claim.* Application must be filed with the Veterans Administration within 5 years after the death of the veteran. If, however, any person otherwise entitled is under legal disability at the time of the veteran's death, the 5-year period will run from the date of termination or removal of the legal disability.

(1) There is no time limit for the submission of evidence.

(2) Failure to file timely claim, or a waiver of rights, by a preferred dependent will not serve to vest title in a person in a lower class or a claimant for reimbursement; neither will such failure or waiver by a person or persons in a joint class serve to increase the amount payable to another or others in the class.

[27 FR 5539, June 12, 1962, as amended at 28 FR 10487, Sept. 28, 1963; 39 FR 30349, Aug. 22, 1974]

PROVISIONAL REGULATIONS

§ 3.1550 Instructions relating to the computation of annuities or pensions received from the Railroad Retirement Board as income for pension purposes.

(a) *Provisions of the law.* (1) Section 4, Pub. L. 86-28 amends section 20 of the Railroad Retirement Act of 1937 to provide that "Pensions and annuities under this Act or the Railroad Retirement Act of 1935 shall not be considered as income for the purposes of section 522 of title 38 of the United States Code."

(2) Section 6(a) further provides that section 4 will be ". . . effective only with respect to pensions due in calendar months after the month next following the month of enactment of this Act and annuities accruing for months after the month of enactment of this Act."

(b) *Scope of coverage*—(1) *Pension.* Benefits received by former railroad employees as pensions, accrued or current, on and after July 1, 1959, will not be counted as income for the purposes of determining entitlement to pension under the provisions of 38 U.S.C. 522. Pension is a term used by the Railroad Retirement Board to identify the monetary benefit paid to former railroad employees who were on the gratuity rolls of the employer by reason of their employment and were on such rolls on March 1, 1937, when the administrative function of paying this benefit was assumed by the Railroad Retirement Board. Persons receiving pension made no contribution under the Railroad Retirement Act to the pension fund.

(2) *Annuity.* Accrued annuities due for any period prior to June 1, 1959, but paid on or after July 1, 1959, will be counted as income. Annuities accruing for periods on and after June 1, 1959, and paid on or after July 1, 1959, will not be counted as income under 38 U.S.C. 522. Annuity is defined for the purposes of payment of Railroad Retirement benefits as that benefit paid to individuals who are retired under the provisions of the Railroad Retirement Act of 1935 or the Railroad Retirement Act of 1937.

(3) *Survivor annuities.* Survivor annuities will not be counted as income under 38 U.S.C. 522. However, such annuities will be considered as income under 38 U.S.C. 545.

(c) *Effective date.* No payments by virtue of this bill may be effective prior to July 1, 1959. (Instruction 1, Pub. L. 86-28)

[26 FR 1609, Feb. 24, 1961]

§ 3.1551 [Reserved]

§ 3.1552 Instructions relating to assistance in acquiring specially adapted housing to seriously disabled veterans.

(a) *Provisions of the law.* Section 801, Title 38, United States Code was amended by Public Law 86-239 to provide assistance in acquiring specially adapted housing to any veteran, who is entitled to compensation under 38 U.S.C. ch. 11 based on service after April 20, 1898, for permanent and total service-connected disability:

(1) Due to the loss, or loss of use, of both lower extremities, such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair, or

(2) Which includes: (i) Blindness in both eyes, having only light perception, plus (ii) loss or loss of use of one lower extremity, and such permanent and total disability is such as to pre-

clude locomotion without the aid of a wheelchair.

(b) *Effects of the act.* Benefits are not restricted to veterans of wartime service.

(1) The act adds a new eligibility category set forth in paragraph (a)(2) of this section, to the laws providing specially adapted housing to veterans entitled to compensation under 38 U.S.C. ch. 11 for peacetime or wartime permanent and total service-connected disability.

(2) The act also eliminates the former requirement that inability to locomote be due to loss, or loss of use by reason of amputation, ankylosis, progressive muscular dystrophies or paralysis of both lower extremities. It will be sufficient for purposes of the act if locomotion without the aid of braces, crutches, canes, or a wheelchair is precluded by the permanent and total service-connected conditions, without regard to etiology of the disabilities enumerated in paragraph (a) of this section.

(3) A veteran entitled to compensation for permanent and total service-connected disability which includes blindness in both eyes, having only light perception and the loss or loss of use of one lower extremity is entitled to assistance under this act if his permanent and total disability precludes locomotion without the aid of a wheelchair. This requirement is in effect threefold: (i) There must be blindness in both eyes having only light perception, (ii) there must be an anatomical loss or loss of use of one lower extremity, (iii) locomotion by means other than a wheelchair must be precluded. When these three elements are present, the veteran is eligible for assistance under this act.

(4) The term "preclude locomotion" is not meant to signify that if motion by any other means is possible, the veteran would be ineligible for benefits under this act. If rare and occasional locomotion by other means is possible, but generally not feasible or recommended, benefits may be in order. It is sufficient for purposes of this act if resort to a wheelchair or other mechanical aid or contrivance is necessary, regular and constant. However, to qualify for assistance locomotion must be prevented by the disability; mere precautionary inactivity will be excluded from consideration.

(c) *Effective date.* This act is effective September 8, 1959. (Instruction 1, 38 U.S.C. 801, Pub. L. 86-239)

[26 FR 1610, Feb. 24, 1961]

§ 3.1553 Implementation of the provisions of the "Veterans' Pension Act of 1959."

(a) *Service requirements of deceased veterans.* (1) Ninety days or more in either World War I, World War II, or the Korean conflict (for method of computing service see § 3.17); or

(2) A discharge or release from such service for a service-connected disability; or

(3) At the time of death was receiving (or entitled to receive) compensation or retirement pay based upon World War I, World War II or Korean conflict service-connected disability.

NOTE: The requirement is eliminated that a World War II or Korean conflict veteran be shown at the time of his death, in addition to the service requirement, to have had a service-connected disability for which compensation would have been payable if disabling to a degree of 10 percent or more.

(b) *Amounts of pension payable within prescribed income limitations*—(1) *Veteran*—(i) *With no dependents.* If the veteran is unmarried (or married but not living with and not reasonably contributing to the support of his spouse) and has no child, pension will be paid at the monthly rate set forth in column II of the following table opposite the veteran's annual income as shown in column I:

I—If income is not over—	II—Monthly amount
$600	$85
$1,200	70
$1,800	40

(ii) *With dependents.* If the veteran is married and living with or reasonably contributing to the support of his spouse, or has a child or children, pension will be paid at the monthly rate set forth in columns II, III, or IV (depending upon the number of his de-

pendents) of the following table opposite the veteran's annual income as shown in column I:

I—If income is not over—	Monthly amount		
	One dependent	Two dependents	Three or more dependents
$1,000	$90	$95	$100
$2,000	75	75	75
$3,000	45	45	45

(iii) *In need of aid and attendance.* If the veteran is in need of regular aid and attendance, the monthly rate payable will be increased by $70.

(iv) *Reasonably contributing to support of spouse.* A veteran will be paid as a person without a spouse unless he is reasonably contributing to her support. In determining whether a veteran is reasonably contributing to the support of his spouse all of the circumstances such as his income and estate and the separate income and estate of his spouse will be taken into consideration. In any case where a special apportionment is made the special apportionment will be considered as reasonable contribution.

(v) *Income of spouse.* For the purpose of counting the income of a spouse, a veteran will be considered as living with his spouse, even though they reside apart, unless they are estranged. Where a veteran is living with his spouse the total annual income of the spouse which is reasonably available to or for the veteran except $1,200 will be considered as the income of the veteran, unless to do so would work a hardship upon the veteran. The income of the spouse will be considered as available to the veteran and counting such income will be presumed not to work a hardship upon him unless evidence is presented to rebut the presumption. Such evidence may consist of a showing that the spouse has incurred unusual family expenses as a result of sickness, hospitalization, prolonged care in a nursing home, or other unusual expenses (e.g., spouse working to help defray veteran's unusual medical expenses). However, the fact that the counting of a part of the spouse's income would reduce or deny the veteran pension will not be considered as working a hardship on him.

(2) *Widow*—(i) *Without child.* If there is no child, pension will be paid at the monthly rate set forth in column II of the following table opposite the widow's annual income as shown in column I:

I—If income is not over—	II—Monthly amount
$600	$60
$1,200	45
$1,800	25

(ii) *With child.* If there is a widow and one child, pension will be paid at the monthly rate set forth in column II of the following table opposite the widow's annual income as shown in column I:

I—If income is not over—	II—Monthly amount
$1,000	$75
$2,000	60
$3,000	40

(iii) *With more than one child.* If there is a widow and more than one child, the monthly rate payable under paragraph (b)(2)(ii) of this section will be increased by $15 for each additional child.

(iv) *Income of child.* The separate income received by a child or children, regardless of custody, will not be considered in computing the widow's income unless given to the widow. In that case only so much money as is left after deducting any expenses for maintenance of the child will be considered the widow's income.

(3) *Child.* (i) If there is no widow entitled to pension, the monthly rates payable are:

One child	$35
Each additional child	15

(*a*) If there is more than one child the total pension payable will be paid in equal shares.

(*b*) Pension will not be paid to a child whose annual income, excluding

earned income, exceeds $1,800. Earned income is that derived from wages or self-employment.

(c) *Computation of annual income*—(1) *Basic rule.* Total income for the full calendar year will be considered except as provided in paragraphs (c)(3) and (6) of this section. The following inclusions apply to the income of a widow, a child where there is no veteran or widow, a veteran and his spouse.

(2) *Income included.*

(i) Income of the spouse as provided in paragraph (b)(1)(v) of this section.

(ii) Special allowance under 38 U.S.C. 412.

(iii) Except as otherwise provided in paragraphs (c)(2)(viii)(b) and (ix) of this section, total salary, retirement or annuity payments, or similar income, irrespective of whether a part of such benefit was waived pursuant to statute, contract, or otherwise.

(iv) The inclusions contained in § 3.252(c).

(v) Commercial life insurance (including Federal employees Government life insurance) consisting of lump sum or installment payments.

(*a*) Commercial life insurance received by a beneficiary will be considered as income in the calendar year in which received even though the beneficiary had the right to elect a lump sum or installment payments.

(*b*) Where an annuity or payment of endowment insurance is received by the purchaser, no part of the payment received will be considered annual income until the full amount of the consideration has been received after which the full amount of such payments will be considered income.

(*c*) Disability, accident or health insurance (less payment of medical or hospital expenses resulting from the disease or accident for which such insurance payments are made).

(vi) Where proceeds of matured life insurance policies or other income is received in one year and payments are made in the following year for just debts or expenses of last illness and burial of the veteran, retroactive adjustment of the pension award may be authorized. In other words, such payments may be offset against prior income when this is to the claimant's advantage. (See also paragraph (c)(3)(vii) of this section.)

(vii) Compensation paid by the Bureau of Employees' Compensation, Department of Labor (of the United States), or pursuant to any workmen's compensation or employer's liability statute, or damages collected because of personal injury or death, less medical, legal, or other expenses incident to the injury or death or the collection or recovery of such moneys. Where monthly payments of such employee's compensation are withheld until the value equals a lump sum paid as damages by a third party, the lump sum will be considered as income when actually received.

(viii) Retirement benefits paid under a Federal, State, municipal or private business or industrial plan, including Railroad Retirement and Social Security benefits (Federal Old Age and Survivors' Insurance and Disability Insurance Benefits).

(*a*) Where the payments received consist of part principal and part interest, interest will not be counted separately.

(*b*) Where the retirement benefit is based on the claimant's own employment, the payments will not be considered income until the amount of the claimant's personal contribution (as distinguished from amounts contributed by the employer) has been received. After he has received an amount equal to his personal contribution, all payments will be considered income.

(*c*) Benefits received by a widow based on her husband's employment will be considered income as received.

(ix) Retirement pay received direct from a service department (except amounts waived under 38 U.S.C. 3105).

(x) Proceeds of bequests and inheritances received in the settlement of estates. However, such property, including stocks and bonds received by inheritance or otherwise, will not be considered as "annual income" until the property or other property acquired in lieu thereof by exchange or barter, has been converted into cash. Where such property is converted into cash, the amount of the claimant's personal contribution will be deducted in determining the net income.

(xi) Gifts.

(xii) World war adjusted compensation.

(xiii) Family allowances authorized by service personnel.

(xiv) Bonus or similar cash gratuity by any State based on service in the Armed Forces of the United States.

(xv) Reasonable value of allowances to a person in military or naval service in addition to base pay, such as clothing, subsistence and quarters.

(xvi) Insurance paid under the Merchant Marine Act of 1936, as amended.

(xvii) Payments under chapter 73 of Title 10 of the United States Code (formerly the Uniformed Services Contingency Option Act) (10 U.S.C. 1441).

(xviii) Subsistence allowance under Title II, Pub. L. 346, 78th Congress, and such education and training allowance, under 38 U.S.C. ch. 33, as is in excess of amounts expended for training.

(xix) Overtime pay received by Government employees

(xx) All other income not specifically excluded.

(3) *Income excluded.* The following exclusions apply to the income of a widow, a child where there is no veteran or widow, a veteran and his spouse:

(i) Payments of 6 months death gratuity from a service department.

(ii) Donations from public or private relief or welfare organizations.

NOTE: This includes the value of maintenance furnished by a friend or relative or by a charitable organization (civic or governmental) and benefits such as old age assistance, aid to dependent children, aid to the needy blind.

(iii) Any compensation, pension and dependency and indemnity compensation payments by the United States Government under laws administered by the Veterans Administration except under 30 U.S.C. 412.

(iv) Payments under policies of United States Government life insurance or National Service life insurance and payments of Servicemen's Indemnity.

(v) Lump-sum death payments under Title II of the Social Security Act.

(vi) Payments to an individual under public or private retirement, annuity, endowment or similar plans or programs equal to his personal contributions thereto.

(vii) Amounts equal to amounts paid by a widow or child of a deceased veteran for:

(*a*) His just debts;

(*b*) The expenses of his last illness; and

(*c*) The expenses of his burial to the extent such expenses are not reimbursed under 38 U.S.C. ch. 23. If a claim for burial allowance has not been made at the time the claim for pension is adjudicated, it will be assumed in determining the actual expenses that $250 will be paid as burial allowance. Subsequent readjustment will be made if the facts indicate otherwise. (See also paragraph (c)(2)(vi) of this section.)

(viii) Proceeds of fire insurance policies.

(4) *Prompt notice of increase in income or corpus of estate, or change in status.* If the claimant begins to receive additional income, the corpus of his estate increases or his status changes during a calendar year, he must immediately furnish prompt notification. If notification of increase in income or in corpus of estate is promptly received, the claimant's pension will be adjusted effective the date of last payment. If such notification is not promptly received, the adjustment will be effective the first day of January of the calendar year in which the income or net worth was increased, or the effective date of the award, whichever is later. Where change in status of dependents is involved and was reported promptly, adjustment will be effective the date of last payment or date of change in status, whichever is later; if not reported promptly, the date of change in status. The principle of § 3.253(e) with respect to prompt notification, will apply.

(5) *Adjustment of pension on the basis of annual income received.* Where there is doubt as to the extent of anticipated income, payment of pension will be at the lowest level consistent with the report of anticipated income. Increased pension will be awarded from the first of that calendar year or from the date of entitlement, whichever is later, if notice of the claimant's actual income is re-

ceived within the succeeding calendar year.

(6) *Proportionate computation.* (i) Income (including that of the spouse) will be computed on a proportionate basis to establish the income increment and basic rate of pension where:

(*a*) The income of the claimant for the calendar year exceeds $600 or $1,000, whichever applies.

(*1*) In the claim of a veteran, where there is no entitlement from the first of the calendar year, the computation will be on a proportionate basis from the date of entitlement.

(*2*) In the claim of a widow or the child of a deceased veteran filed within 1 year from the date of the veteran's death, computation will be on a proportionate basis from the date of the veteran's death. If pension is payable only from the date of filing claim, the claimant's income will be computed on a proportionate basis from date of claim.

(*b*) Where there is a status change affecting income limitation and the income of the claimant for the calendar year exceeds $600 or $1,000, whichever applies:

(*1*) From the date the status of a veteran changes during a calendar year from that of a married veteran (or a person who has a child or children) to that of an unmarried person (or a person who does not have a child or children).

(*2*) From the date the status of a veteran changes during a calendar year from that of an unmarried veteran (or a person who does not have a child or children) to that of a married person (or a person who has a child or children).

(*3*) From the date the status of a widow changes during a calendar year from that of a widow and a child to that of a widow without a child.

(*4*) From the date the status of a widow changes during a calendar year from that of a widow without a child to that of a widow and a child.

(*5*) In determining entitlement under the circumstances outlined in paragraphs (c)(6)(i)(*a*) (*1*) through (*4*) of this section, the proportionate computations will be applied to each period separately and will not be combined to afford a total applicable to the entire calendar year. The amount of income received within each separate period will determine entitlement to pension for that period.

(ii) If the claimant's total income for the calendar year is less than $600 or $1,000, whichever applies, the date of receipt of such income is not a factor and income will not be computed proportionately for only part of a year.

(iii) Where a beneficiary who is receiving pension under the prior law, elects to receive pension under Pub. L. 86-211 his pension rate will be based upon his annual income for the entire calendar year 1960.

(d) *Corpus of estate.* Payment of pension will not be authorized when the corpus of estate is such that under all the circumstances including consideration of income, it is reasonable that some part of the corpus be consumed for maintenance. This limitation applies to the estate of a veteran, widow or a child where there is no veteran or widow.

(1) *Principles of measurement of corpus of estate.* The term corpus of estate means the net worth of all real and personal property.

(i) *Property which is owned jointly by the veteran and his wife—(a) Real property.* The recorded deed or other evidence of title will constitute prima facie evidence of ownership as shown. In the event both husband and wife appear as owners, whether by purchase, gift, inheritance or operation of law it will be presumed that each owns one-half. The veteran's statement as to the nature and type of ownership will be accepted as prima facie evidence of the pertinent facts stated unless all the evidence of record raises a doubt. If such evidence raises a doubt as to the nature and type of ownership, the determination will be made in accordance with the facts found.

(*b*) *Personal property.* All personal property, the title to which is in the name of the veteran, or in his name jointly with his wife, which is subject to disposition by him without joinder of his wife, will, for the purpose of determining the corpus of the veteran's estate, be considered the property of the veteran.

(ii) If the veteran owns property in partnership, the portion to be counted as part of the veteran's estate will be determined by the facts.

(iii) Where there is a veteran, wife and/or child or children, the corpus of the veteran's estate only will be considered; the corpus of the estate of the wife and/or child or children will not be considered. Where there is a widow and child or children the corpus of the widow's estate only will be considered; the corpus of the estate of the child or children will not be considered. Where there is a child or children only the corpus of the estate of the child or children will be considered.

(2) *Factors for consideration.* Judgment will be exercised in individual cases in determining whether the corpus of the claimant's estate is such that it is reasonable to assume that part of it should be consumed for his maintenance before pension would be payable. Items to be considered in determining whether part of the corpus of the estate should be consumed before pension eligibility is established include:

(i) *Type and amount of property involved.* Whether the property can be readily converted into cash at no substantial sacrifice to the claimant. The claimant will not be expected to sell his dwelling (single family unit). Generally ownership of nonincome producing realty will not bar payment of pension unless there is a sizeable amount. Stocks, bonds, other liquid securities and cash and savings accounts will be measured against the needs of the claimant.

(ii) *Age of the claimant and life expectancy.* If the claimant is young, it will be considered that consumption of part of the estate would be more burdensome than in the case of an older claimant since with greater life expectancy need for a greater estate is demonstrated.

(iii) *The state of health of the claimant and his dependents.* It can readily be seen if large medical and hospital expenses are to be anticipated that the potential rate of depletion may preclude liquidation of part of the estate.

(iv) *Number of persons dependent on claimant for support.* Here too, the obligations of the claimant to those dependent upon him for support would have an important bearing on the determination as to whether it would be reasonable that part of the estate be consumed before awarding pension.

(v) *Estate as related to income.* If, in addition to his estate, the claimant has sizeable income (though still within the income limits) this fact together with the size and nature of his estate will be considered. Attention should be given to claimed expenses and if unusual expenses, especially medical, hospital and education, are encountered, this will be carefully weighed.

(e) *Adjustment of pension where veteran is in a Veterans Administration institution, or other institution at the expense of the Veterans Administration (including domiciliary care).*

NOTE: This paragraph applies only to veterans receiving pension under Pub. L. 86-211 and Spanish-American War veterans who are first awarded pension effective after June 30, 1960.

(1) *Reduction of pension.* Upon receipt of VA Form 21-404, any running award of pension, except where the veteran is receiving care or treatment for Hansen's disease, will be reduced to $30 per month effective:

(i) The first day of the month following 2 full calendar months of care or treatment after the month of admission, or October 1, 1960, whichever is later.

(ii) The day of admission or readmission (including readmission from completion of bed occupancy care status) within 6 months following a period of care or treatment of not less than 2 full calendar months after July 1, 1960, or

(iii) The day of return from furlough or leave of absence of 30 days, readmission from trial visit, or completion of bed occupancy care, where a previous reduction has been made under Pub. L. 86-211.

NOTE: Periods of treatment or care prior to July 1, 1960, will not be considered under Pub. L. 86-211.

The date of October 1, 1960, is predicated upon a constructive admission on July 1, 1960, with respect to a vet-

eran receiving pension on June 30, 1960, and who is awarded pension effective July 1, 1960, under Pub. L. 86-211 because of his election. Where a hospitalized or institutionalized veteran is awarded pension under Pub. L. 86-211 on the basis of a new claim with an effective date subsequent to July 1, 1960, the period of treatment or care subsequent to June 30, 1960, will be counted even though all or a part of it was before the effective date of his award. However, where a hospitalized or institutionalized veteran elects to receive pension under Pub. L. 86-211 and the effective date of his election is subsequent to July 1, 1960, the period of treatment or care prior to the effective date of his election will not be counted; his pension will be reduced to $30 monthly effective the first day of the month following 2 full calendar months of care or treatment after the month of election.

(2) *Aid and attendance.* The allowance for regular aid and attendance will be continued during periods of treatment or care where the disability is paraplegia involving paralysis of both lower extremities together with loss of anal and bladder sphincter control, Hansen's disease, blindness (visual acuity 5/200 or less or concentric contraction of visual field to 5 degrees or less). These awards are, however, subject to reduction under paragraph (e)(1) of this section except where the disabling condition is Hansen's disease.

(3) *Apportionment to wife or children.* Where the pension of any veteran is reduced under the provisions of paragraph (c)(1) of this section, an apportionment may be made to his wife and/or children effective the date his pension was reduced. The amount of the apportionment generally will be the difference between $30 and the rate payable during the first 2 months of treatment or care. In the exceptional case where claims file evidence clearly establishes materially reduced need on the part of wife or children (example, veteran is already contributing a reasonable amount for an estranged wife) no apportionment or apportionment in a reduced amount will be made in accordance with the facts found. In no event will the veteran be paid more than $30 monthly while hospitalized. If there is a child or children but no wife VA Form 21-592 together with the C-folder will be forwarded to the Chief Attorney informing him that an apportioned award is contemplated and of the amount and effective date. Upon receipt of a reply from the Chief Attorney, payments will be made to the fiduciary appointed by a court or, in the absence of such, one designated by him. If there is a wife and child or children and the children are not in the custody of the wife, the case will be further developed and in addition to the wife's share an apportionment made to the custodian of the children who is recognized by the Chief Attorney. The amount of apportionment for the children will depend upon the equities presented.

(4) *Apportionment to dependent parents.* Where an incompetent veteran having neither wife nor child is receiving care or treatment by the Veterans Administration and his estate exceeds $1,500, an apportionment to his dependent parents under Pub. L. 86-146 (38 U.S.C. 3203(b)(3)) may not exceed $30 monthly, after 2 full calendar months of treatment or care in Pub. L. 86-211 cases.

(5) *Restoration of pension upon termination of treatment or care.* Where a veteran whose pension has been reduced under paragraph(c)(1) of this section is released from treatment or care the apportionment to his wife or children will be discontinued effective the day before his release. The veteran will be awarded the full amount of pension to which he is then entitled from the date of release. If the VA Form 21-404 is not received in sufficient time to effectuate the adjustments without creating an overpayment in the apportioned award the apportionment will be discontinued effective the date of last payment and the veteran awarded his full entitlement effective the day following the date of last payment. (The reduction in pension after 2 months is an absolute reduction as distinguished from a withholding and no lump sum is payable upon release.)

(f) *Right of election*—(1) *General.* A statement in writing, signed by the

beneficiary (or fiduciary), will be accepted as a valid election. The election may be deferred and exercised at any future date. Action may not be taken to award pension at the new rates until receipt of an election.

(2) *Finality of election.* An election of pension under Title 38, United States Code, as amended by Pub. L. 86-211 is final and irrevocable after a pension check received thereunder is negotiated, thereby prohibiting a subsequent reelection of pension under Title 38, United States Code, prior to this enactment.

(3) *Exercise of right of election and its effect.* Only veterans, widows, or children where there is no widow, (or their fiduciaries) may make an election and such election controls the rights of all dependents, including children not in the veteran's or widow's custody. However in an apportioned death pension case, the election by the widow will not be permitted to deprive children not in her custody of the present rate of pension and the letter to the widow will include the information that her share will be reduced by the amount necessary to maintain such child's apportioned share at the current rate if she insists upon the election.

(4) *Minors and incompetents.* An election may be made by a fiduciary appointed by a court or, in the absence of such, one designated by a Chief Attorney, including a wife who is being paid under § 13.57 of this chapter. However, an election may not be made by a Manager or chief officer of a hospital or institution who is receiving payment on behalf of an incompetent veteran.

(5) *Effective dates.* When an election is received on or before July 1, 1960, the effective date of the new rate will be July 1, 1960. If an election is received subsequent to July 1, 1960, the new pension rate will be awarded effective the date of receipt of the election, except where death occurs prior to July 1, 1960, claim is filed within 1 year after death and the election is filed within 4 months from date of notice of award, the effective date of the new pension rate will be July 1, 1960. Claimants who were not receiving pension when VA Form 21-6799(NR) was sent as an enclosure with the pension checks mailed the latter part of February 1960 and whose entitlement includes eligibility to pension on June 30, 1960, will be given 4 months from the date of notice of their award within which to elect pension under Pub. L. 86-211. If an election is received within this 4-month period, pension under Pub. L. 86-211 may be paid from July 1, 1960. In those cases where a wife or child is alleged on the application and evidence establishing relationship or birth is received within 1 year from the date of request, pension or increased pension will be awarded effective the date of the original award. Where no election form is sent to a hospitalized incompetent veteran, and a fiduciary is appointed or the veteran is rated competent, pension may be paid from the date of hospital discharge but not prior to July 1, 1960, if an election is received within 4 months from the date of the letter informing the fiduciary or the veteran of the right of election.

(g) *Adjustment of payments by amended award on VA Form 21-553 or VA Form 21-519a*—(1) *Apportioned cases*—(i) *Veteran cases.* Where there is an appointment of an incompetent veteran's pension under § 3.310, the increase will be awarded to the dependent or dependents only. In specially apportioned cases, the increase will be awarded to the veteran only, unless the equities indicate otherwise, in which event the pension will be reapportioned.

(ii) *Widow cases.* Where there is an apportionment of a widow's pension under the provisions of Title 38, United States Code, as amended by Pub. L. 86-211, the widow's share will be the monthly rate set forth in column II of the following table opposite the widow's annual income as shown in column I:

I—If income is not over—	II—Monthly rate of apportionment
$1,000	$45
$2,000	36
$3,000	24

Where death pension has been specially apportioned, the increase will be awarded to the widow unless the equities require a reapportionment.

(2) *Imprisoned claimants.* Where an apportionment is being made to an imprisoned veteran's wife and/or child the right to elect pension under Pub. L. 86-211 is vested in the veteran only. The amount may not exceed the death or disability (whichever is the lesser) rate payable under 38 U.S.C. 521 or 38 U.S.C. 541, as amended by Pub. L. 86-211. If the veteran is unmarried and has no child or if he has a wife and/or child but they are ineligible for an apportionment on June 30, 1960, because need (as established by income limitations for death pension under this law) is not shown or for any other reason the veteran has no right of election since he was not receiving or entitled to receive pension on June 30, 1960. If he becomes eligible for pension upon his release from imprisonment on or after July 1, 1960, he will be awarded this benefit only under Pub. L. 86-211. The foregoing also applies to imprisoned wives or children. However, where a child is receiving pension because the widow is imprisoned the right of election is vested in the widow only even though a guardian is receiving payments for the child.

(h) *Savings provisions; general.* (1) Any person receiving or entitled to receive pension on June 30, 1960, may receive these benefits for such periods thereafter for which he qualifies under Title 38, United States Code, in effect on that date. This protective clause is to be interpreted so as to preclude denial, reduction or discontinuance of payments because of Pub. L. 86-211 to any veteran, widow or child receiving or entitled to receive benefits on June 30, 1960, by virtue of laws and Veterans Administration regulations then in effect. Such protection is afforded despite the fact that receipt of pension on June 30, 1960, resulted from mistake of fact or law on the part of the Veterans Administration. However, such protection will not be afforded if receipt of pension on June 30, 1960, resulted from a deliberate act of commission or omission of the claimant.

(i) *Change in income or dependency status promptly reported.* (*a*) Where the receipt of additional income, change in rate of income, or a change in dependency status before July 1, 1960, was promptly reported thereby causing pension to be discontinued prior to June 30, 1960, there is no protection to pension under laws in effect on June 30, 1960. Protection does not exist in such cases because the claimant was not receiving pension on June 30, 1960.

(*b*) Where the receipt of additional income, change in rate of income, or a change in dependency status, whether before, on, or after June 30, 1960, was promptly reported thereby causing pension to be discontinued after June 30, 1960, there is protection to pension under laws in effect on June 30, 1960. Protection is afforded in such cases because the claimant was receiving pension on June 30, 1960.

(ii) *Change in income or dependency status not promptly reported.* Under § 3.253(d) all claimants are required to promptly report changes in income or dependency status. Failure to promptly report requires discontinuance or reduction of pension retroactive to the first of the year. The determination of whether or not a change was promptly reported is one of fact, and in the application of § 3.253(d) a showing that claimant was "without fault" will not serve to prevent creation of the overpayment. Alleviating circumstances are, however, properly for consideration by the Committee on Waivers in determining whether claimant was "without fault" in connection with the resultant overpayment.

(*a*) Where the receipt of additional income, change in rate of income, or a change in dependency status prior to July 1, 1960, was not reported promptly resulting in receipt of pension on June 30, 1960, and thereby causing pension to be discontinued retroactively to a date prior to June 30, 1960,

there is no protection to pension under laws in effect June 30, 1960. However, it is not improper in determining lack of protection to consider whether claimant was "without fault" since the basic rule that protection will be afforded if claimant was receiving pension June 30, 1960, can be negated only where there was a deliberate act of omission or commission on his part. In these cases the determination of fault will be based on the same criteria used under 38 U.S.C. 3102. It follows that if the Committee on Waivers has determined the question of fault in connection with waiver, this determination will also be followed in determining protection. Otherwise the determination will be made by adjudication personnel when affirmative evidence is received to rebut the prima facie showing inherent in the failure to promptly report a change in income or dependency status.

(*b*) Where the receipt of additional income, change in rate of income, or a change in dependency status after June 30, 1960, was not reported promptly thereby causing pension to be discontinued retroactively to a date prior to June 30, 1960, there is protection to pension under laws in effect on June 30, 1960, because the claimant was receiving pension on June 30, 1960. The retroactive discontinuance of pension in such cases affects only the monetary payment and does not preclude protection.

(2) Protection is accorded in those cases in which a veteran in receipt of pension on June 30, 1960, is found to be not permanently and totally disabled after that date, but who is subsequently again rated as permanently and totally disabled. The protective provision is for application only in those cases in which no election under Pub. L. 86-211 is made. However, a claimant whose pension was discontinued for any reason prior to July 1, 1960, and who was not entitled on June 30, 1960, but who becomes entitled after that date may be awarded pension only under the provisions of Pub. L. 86-211. Claimants who elect benefits under Pub. L. 86-211 and are paid under it are subject to all of its provisions.

(3) Waivers of all or part of certain benefits by some claimants had been accepted for pension purposes prior to the calendar year 1960. The annual income questionnaire instructions released in January 1961, required reporting of the claimant's total income, including any such amounts which had been waived but excepting those specifically exempted by law. The date such instructions were received will constitute the beginning of a prompt notice period. Therefore, in such cases the following rules will apply:

(i) If notice of the waived income was received before negotiation of the February 1961 check, it will be considered prompt notice under § 3.253(d). Discontinuance of pension will be effective date of last payment and there is protection to pension under laws in effect on June 30, 1960, since the claimant was receiving pension on that date.

(ii) If notice of the waived income is not received before negotiation of the February 1961 check, it will not be considered prompt notice under § 3.253(d). The amount of pension paid from January 1, 1961, to which the payee was not entitled will be considered an overpayment, subject to the waiver provisions. However, there is protection to pension under laws in effect on June 30, 1960, in these cases since the claimant was receiving pension on that date. (Instruction 1-A, Pub. L. 86-211)

[26 FR 1610, Feb. 24, 1961, as amended at 26 FR 10551, Nov. 9, 1961]

§ 3.1554 Amendment to 38 U.S.C. 511 and 512 permitting Indian War and Spanish-American War veterans to elect to receive pension under the provisions of Public Law 86-211.

(a) *Provisions of the law*—(1) *Veterans of the Indian Wars.* Section 1 of Pub. L. 86-670 amends 38 U.S.C. 511 adding at the end thereof the following:

(c) Any veteran eligible for pension under this section shall, if he so elects, be paid pension at the rates prescribed by section 521 of this title, and under the conditions (other than the service requirements) applicable to pension paid under that section to veterans of World War I. If pension is paid

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pursuant to such an election, the election shall be irrevocable.

(2) *Veterans of the Spanish-American War.* Section 2 of Pub. L. 86-670 amends 38 U.S.C. 512(a) by adding at the end thereof the following:

(3) Any veteran eligible for pension under this subsection shall, if he so elects, be paid pension at the rates prescribed by section 521 of this title, and under the conditions (other than the service requirements) applicable to pension paid under that section to veterans of World War I. If pension is paid pursuant to such an election, the election shall be irrevocable.

(b) *Effect of the act.* Pub. L. 86-670 permits veterans of the Indian and Spanish-American Wars, who meet the service requirements of 38 U.S.C. 511(b) or 512(a)(2), to elect to be paid pension at the rates and under the conditions provided by Pub. L. 86-211. All of the substantive provisions of § 3.1553 and of the subsequent issues interpretative of chapters 15 and 55, Title 38, United States Code, as amended by Pub. L. 86-211 as they relate to veterans of World War I, World War II, or the Korean conflict are also for application to elections of veterans of the Indian and Spanish-American Wars except as specifically provided in this section.

(c) *Notice to claimants.* (1) Veterans of the Indian and Spanish-American Wars who are receiving monthly pension of $135.45 based on the need of regular aid and attendance under 38 U.S.C. 511(a)(2) or 512(a)(1)(B) will be informed of their right to irrevocably elect to receive pension under Pub. L. 86-211, of the pension payable thereunder and of the conditions under which each amount is payable.

(2) VA Form 21-6799 (NR), "Election, Net Worth and Income Questionnaire", will also be forwarded with each letter. It is not necessary, however, that the election be made on this form. A statement in writing, signed by the veteran (or fiduciary) will be accepted as a valid election. The election may be deferred and exercised at any future date. Action may not be taken to award pension at the new rate until receipt of an election.

(3) Veterans of these wars who are receiving pension of $101.59 monthly are also eligible to elect under Pub. L. 86-211. However, since it would not be to their financial advantage to elect they will not be routinely informed of this right. If they subsequently become entitled to pension of $135.45 monthly based on the need of regular aid and attendance, they will be fully informed of the provisions of Pub. L. 86-211 and of their right of election.

(d) *Effective dates.* (1) Payment of pension under Pub. L. 86-211, pursuant to this law, will be effective from the date of receipt of an election or September 1, 1960, the effective date of Pub. L. 86-670, whichever is later.

(2) Where a veteran states on VA Form 21-6799 (NR) that he is married or has a minor child or children and the amount of pension payable to him under Pub. L. 86-211 as a veteran without dependents is greater than the amount he is receiving under the old law, he will be awarded pension under Pub. L. 86-211 as a veteran without dependents. He will be informed of this action and requested to furnish evidence establishing marriage or the existence of the child. If this evidence is received within 1 year from the date of request, he will be awarded the increased pension payable because of his dependents, retroactively from the effective date of the award of pension under Pub. L. 86-211.

(3) If under the same circumstances he would receive less pension under Pub. L. 86-211 as a veteran without dependents than he is receiving under the old law, action on his election will be deferred. He will be informed of this action and requested to furnish evidence establishing his marriage or the birth of the child. If this evidence is furnished within 1 year from the date of request, he will be awarded pension under Pub. L. 86-211, effective the date of receipt of his election or September 1, 1960, the effective date of Pub. L. 86-670, whichever is the later.

(e) *Savings provisions*—(1) *Veterans.* Veterans who become entitled to pension under 38 U.S.C. 511 or 512(a) on or after September 1, 1960, the effective date of Pub. L. 86-670, remain eligible to receive and will be awarded such benefits under the applicable cited section of Title 38, United States Code, prior to its amendment by Pub.

L. 86-670, subject to the right of election as provided in paragraph (d).

(2) *Widows and children.* The election of a veteran does not control nor affect the future rights of his wife and children. If he should predecease them, they, as his survivors, would remain eligible to receive pension under the provisions of sections 534, 535, 536 or 537, of Title 38, United States Code, whichever is applicable.

(3) *Finality of election.* An election under Pub. L. 86-670 is final and irrevocable as to the veteran after a pension check received thereunder is negotiated, thereby prohibiting a subsequent reelection of pension under 38 U.S.C. 511 and 512 prior to their amendment by Pub. L. 86-670. (Instruction 2, Title 38 U.S.C. chapters 15 and 55, Pub. L. 86-211 (Pub. L. 86-670).)

[26 FR 1614, Feb. 24, 1961]

§ 3.1555 Presumption of service connection for multiple sclerosis under 38 U.S.C. 312(4), as amended by Public Law 86-187.

(a) *Provisions of the law.* The law amends section 312(4) of Title 38, United States Code, by striking out "two" and inserting in lieu thereof "three". Section 312 thus reads in pertinent part:

For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, in the case of any veteran who served for ninety days or more during a period of war—

* * * * *

(4) multiple sclerosis developing a 10 per centum degree of disability or more within three years from the date of separation from such service;

* * * * *

shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service.

(b) *Effect of the act.* The law extends the presumptive period for service connection from 2 to 3 years. It is applicable to both disability and death claims where there is wartime service.

(c) *Effective date.* The date of enactment of this act was August 25, 1959. No benefit based solely on the liberalizing provisions of this law may be made effective prior to date of enactment.

(1) *Pending claims.* The effective date of an award as to a claim pending on the date of enactment will be August 25, 1959, if evidence otherwise establishes entitlement on that date. Pending claims will include:

(i) A claim not previously adjudicated.

(ii) A previously disallowed claim pending consideration on appeal.

(iii) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry on which action was pending on date of enactment.

(iv) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry after date of enactment but within the appeal period.

(2) *New claims.* All other claims, formal or informal, received on or after August 25, 1959, will be considered initial claims for the purpose of this law and the effective date will be determined under applicable laws and regulations relating to original claims but not earlier than August 25, 1959. (Instruction 1, 38 U.S.C. 312(4), Pub. L. 86-187)

[26 FR 1615, Feb. 24, 1961]

§ 3.1556 Presumption of service connection for Hansen's disease (leprosy) under 38 U.S.C. 312, as amended by Public Law 86-188.

(a) *Provisions of the law.* The law amends section 312 of Title 38, United States Code, by adding after paragraph (4) of the section, a paragraph (5). Thus, section 312 reads in pertinent part:

For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, in the case of any veteran who served for ninety days or more during a period of war—

* * * * *

(5) Hansen's disease developing a 10 per centum degree of disability or more within three years from the date of separation from such service;

shall be considered to have been incurred in or aggravated by such service, notwithstand-

ing there is no record of evidence of such disease during the period of service.

(b) *Effect of the act.* The law extends the presumptive period for service connection from 1 year to 3 years in cases of war veterans. It is applicable to both disability and death claims. The amendment applies only to war service. It does not amend 38 U.S.C. 333, or change the rule as to peacetime service connections.

(c) *Effective date.* The date of enactment of this act was August 25, 1959. No benefit based solely on the liberalizing provisions of this law may be made effective prior to date of enactment.

(1) *Pending claims.* The effective date of an award as to a claim pending on the date of enactment will be August 25, 1959, if evidence otherwise establishes entitlement on that date. Pending claims will include:

(i) A claim not previously adjudicated.

(ii) A previously disallowed claim pending consideration on appeal.

(iii) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry on which action was pending on date of enactment.

(iv) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry after date of enactment but within the appeal period.

(2) *New claims.* All other claims, formal or informal, received on or after August 25, 1959, will be considered initial claims for the purpose of this law and the effective date will be determined under applicable laws and regulations relating to original claims but not earlier than August 25, 1959. (Instruction 1, 38 U.S.C. 312(5), Pub. L. 86-188)

[26 FR 1615, Feb. 24, 1961]

§ 3.1557 [Reserved]

§ 3.1558 Title 38, United States Code 106a, as modified by Public Law 86-142. Recognition of service in the Women's Army Auxiliary Corps (WAAC) as active military service for persons who subsequently performed service in the Armed Forces.

(a) *Provisions of the law.* (1) Section 1 of the law adds the following to Title 10, United States Code:

1038. Service Credit: certain service in Women's Army Auxiliary Corps.

In computing years of active service of any female member of the armed forces, there shall be credited for all purposes, except the right to promotion, in addition to any other service that may be credited, all active service performed in the Women's Army Auxiliary Corps after May 13, 1942, and before September 30, 1943, if that member performed active service in the armed forces after September 29, 1943. Service as an officer in the Women's Army Auxiliary Corps shall be credited as active service in the status of a commissioned officer, and service as an enrolled member of the Corps shall be credited as active service in the status of an enlisted member.

(2) Section 2 provides:

A person entitled to pension or compensation under any law administered by the Veterans' Administration, based upon the active service described in section 1 of this Act, may elect within one year after the enactment of this Act to receive that pension or compensation in lieu of any compensation under the Federal Employees' Compensation Act, as amended (5 U.S.C. 751 et seq.), to which that person is entitled on the basis of the same service. Such an election is irrevocable and does not entitle that person to the pension or compensation for any period before the date the election is made.

(3) Section 3 states:

No person is entitled to back pay or allowances because of any service credited under section 1 of this Act.

(b) *Effect of the act*—(1) *General.* For service in the Women's Army Auxiliary Corps after May 13, 1942, and before September 30, 1943, to be considered active service for benefits administered by the Veterans Administration because of active service in the Armed Forces subsequent to September 29, 1943, the period of active service in the Women's Army Auxiliary Corps must have been terminated by release or discharge under conditions other than dishonorable. Only "active service in the armed forces after September 29, 1943," that was terminated under conditions other than dishonorable will qualify a period of Women's Army Auxiliary Corps service as active service for Veterans Administration benefits. There is no requirement that the qualifying, subsequent active service be consecutive with or proximate to the Auxiliary Corps service or that

it be during a defined war period. This act does not limit benefits provided former members of the Women's Army Auxiliary Corps under any other law.

(2) *Pensions.* An individual who performs active service in the Armed Forces after September 29, 1943, may be credited in addition with active service performed in the Women's Army Auxiliary Corps after May 13, 1942, and before September 30, 1943, for purposes of pension eligibility; requirements of active service for a total of 90 days or more can be composed of two or more periods of service in World War II, e.g., Women's Army Auxiliary Corps service combined with Women's Army Corps or other active service in the Armed Forces. Moreover, 90 or more days service in Women's Army Auxiliary Corps becomes active service for pension, where there is later active service even outside a war period.

(3) *Compensation.* An individual with disability incurred in or aggravated by service in the Women's Army Auxiliary Corps with subsequent qualifying active service in the Armed Forces is entitled to disability compensation on the same basis as any other person with a disability resulting from disease or injury in active service.

(c) *Elections*—(1) *Persons receiving federal employees' compensation based on Women's Army Auxiliary Corps service on date of enactment (August 7, 1959.)* The limitation on the time in which an election to receive Veterans Administration compensation or pension must be made that is contained in section 2 of this act is interpreted to have application only to persons receiving federal employees' compensation based on Women's Army Auxiliary Corps service on the effective date of this law (Aug. 7, 1959).

(2) *Persons not receiving federal employees' compensation based on Women's Army Auxiliary Corps service on August 7, 1959.* Current law prohibits concurrent payment of federal employees' compensation based on Women's Army Auxiliary Corps service and Veterans Administration compensation or pension based on any period of service.

(3) *Effects of election.* Since a veteran's election or the election of a surviving dependent to receive Veterans Administration compensation or pension instead of compensation under the Federal Employees' Compensation Act is final and re-election is prohibited, every claim considered under this act should first be considered for compensation or pension entitlement. Then the veteran or dependent should be notified of the potential Veterans Administration compensation or pension and the effects of an election to receive the Veterans Administration benefit. A binding election is made only after the beneficiary has been properly informed of her entitlement to compensation or pension and her right to elect between the benefits from the Veterans Administration and compensation under the Federal Employees' Compensation Act; moreover, she must be aware of the finality of the election. Care should be exercised to assure that information supplied will be sufficient to insure a valid, irrevocable election.

(d) *Effective dates.* Since Pub. L. 86-142 creates a new basis for eligibility, veterans in the prescribed category must file claim for benefits. The effective date of an award of compensation or pension under this law shall be the date of enactment, August 7, 1959, the date of claim, the date evidence shows entitlement or the date of receipt of election to receive Veterans Administration payments, whichever is the later. If award is effective the date of receipt of election it will be subject to offset of any payments made by the Bureau of Employees' Compensation over the same period. (Instruction 1, Pub. L. 86-142)

[26 FR 1616, Feb. 24, 1961]

§ 3.1559 Instructions relating to accumulation and final disposition of certain benefits in the case of incompetent veterans.

(a) *Effects of Public Law 86-146*—(1) *Section 3202(d).* All gratuitous benefits deposited by the Veterans Administration either prior or subsequent to December 1, 1959, into a Personal Funds of Patients account of a veteran rated or adjudged mentally incompe-

tent or insane will be paid upon his death in the following order of preference to persons living at time of settlement. Funds not deposited by the Veterans Administration but deposited by the veteran or others to the veteran's account will be excluded from application of this law.

(i) Surviving spouse.

(ii) Children (without regard to age or marital status) in equal parts, and

(iii) Dependent parents in equal parts.

In the absence of any person in the preceding classes, there may be paid (other than to a political subdivision of the United States) from any balance remaining so much as may be necessary for last sickness or burial expenses. Any remainder will be credited to the current appropriation.

(2) *Section 3203(a)(2)(B).* Any claim filed pursuant to the preceding subparagraph must be filed within 5 years after the veteran's death. If the person entitled is under legal disability at the time of the veteran's death, the 5-year period will run from date of removal of legal disability. Failure of a preferred dependent to file timely claim will not operate to establish entitlement of a dependent in a lower class or a claimant for reimbursement. Failure of a member of a joint class to file timely claim will not serve to increase the amount otherwise payable to the other members of that class. A waiver of rights by a person having title to all or a share of funds representing gratuitous benefits on deposit in the Personal Funds of Patients account will not serve to vest title in a person having equal or successor rights.

(3) *Section 3203(b).* (i) Prohibits payment of accrued lump sum where there is no wife, child or dependent parent as now prohibited by § 3.1007.

(ii) Extends to hospital treatment, institutional or domiciliary care by political subdivisions of the United States the provisions of § 3.557 regarding discontinuance of payments of compensation, pension or emergency officers' retirement pay where veteran's estate equals or exceeds $1,500. Also requires discontinuance where there is only a dependent parent (or parents). Thus, payments will be continued only if there is a wife or child.

(iii) When payments are discontinued under the preceding subdivision and the veteran has a dependent parent (or parents), the amount payable but for the discontinuance may be apportioned to the parent (or parents) based on need. The amount not so apportioned may be paid for the veteran's maintenance.

(iv) Continues authority for institutional awards contained in § 3.852.

(b) *Definitions.* (1) The term "any political subdivision of the United States" includes the District of Columbia, the various States of the United States, its territories, insular possessions or the Commonwealth of Puerto Rico and the counties, cities or municipalities located therein.

(2) The term "without charge or otherwise" means with or without charge.

(c) *Value of estate.* For purposes of the application of the provisions of Pub. L. 86-146, the value of veterans' estates will be established in accordance with the following principles:

(1) Except as stated in paragraph (c)(2) of this section, all funds, including accumulated social security and amounts on deposit in Funds Due Incompetent Beneficiaries and to the veteran's credit in Personal Funds of Patients at Veterans Administration regional offices, hospitals and State institutions, as well as other property, both personal and real (which is capable of being liquidated), and interests therein owned by the veteran, will be included in arriving at the value of the veteran's estate.

(i) *Real and personal property.* The value of such property, including interests therein, will be established at the estimated net price the veteran's equity in the property will bring at forced sale after payment of all costs incident to the liquidation.

(ii) *United States Savings Bonds, War Bonds, Adjusted Service Bonds, and other Appreciation Bonds.* The current value including accrued interest will be used.

(iii) *Bonds and stocks.* The current price listed on a recognized stock exchange will be the value to be used.

(iv) *Cash in the estate.* This will be included for valuation purposes notwithstanding it was derived from any of the excluded items in subparagraph (2) of this paragraph.

(2) Items listed in § 13.109(a)(4) of this chapter will not be included as assets.

(d) *Criteria for parents' needs.* Section 3.250(b) is applicable in determining the need of a dependent parent (or parents).

(e) *Effective dates*—(1) *Section 3202(d).* The limitations imposed on payment of funds from gratuitous benefits under laws administered by the Veterans Administration on deposit in Personal Funds of Patients accounts are effective as to deaths after November 30, 1959. The limitations apply to all funds described in paragraph (a)(1) on deposit at the time of the veteran's death whether accrued before or after the effective date of the act.

(2) *Section 3203(a)(2)(B).* The limitations on time of filing claim for funds from such gratuitous benefits will be governed by the date of the veteran's death or the effective date of this act whichever is the later. Application for these amounts must be received within 5 years after the death of the veteran or from removal or termination of legal disability as specified by this subsection.

(3) *Section 3203(b)(2)*—(i) *Apportionments.* The effective date of this act is December 1, 1959. No apportionment to a parent based solely on the provisions of this law may be made effective prior to that date.

(*a*) *Running awards.* In any case in which payments to a veteran have been continued while he is hospitalized solely because the dependency of a parent (or parents) has been established, no claim for apportionment under this act will be required from such parent (or parents). Apportioned awards to such parent (or parents) will be effective December 1, 1959, subject to establishing current dependency and need status and recommendation by the Chief Attorney of the amount to be paid each parent from that date.

(*b*) *Pending claims.* The effective date of an award as to a claim for apportionment pending on date of enactment will be December 1, 1959, if evidence otherwise establishes entitlement on that date. Pending claims will include:

(*1*) A claim not previously adjudicated.

(*2*) A previously disallowed claim pending consideration on appeal.

(*3*) A previously disallowed claim reopened by the receipt of any claim, evidence, or inquiry on which action was pending on date of enactment.

(*4*) A previously disallowed claim reopened by the receipt of any claim, evidence, or inquiry after date of enactment but within the appeal period.

(*c*) *New claims.* All other claims for apportionment, formal or informal, received on or after the date of enactment will be considered initial claims for the purpose of this law and the effective date will be determined under applicable laws and regulations relating to original claims but not earlier than December 1, 1959.

(*d*) *Additional compensation for dependents.* Awards of additional compensation for dependent under 38 U.S.C. 315 and 335 will be effective as provided in 38 U.S.C. 3011 and § 3.400(o).

(ii) *Other awards.* (*a*) Limitation applying to payment of pension, compensation or emergency officers' retirement pay for incompetent veterans having neither wife nor child who are being furnished hospital treatment, institutional or domiciliary care by the United States or any political subdivision thereof apply from December 1, 1959. Date of stop payment on those cases falling within the limitation on that date will be November 30, 1959, even though evidence necessary for authorization action is received in the Adjudication Division at a subsequent date if the facts were known to any element of the Veterans Administration.

(*b*) Original, reopened and amended awards on and after December 1, 1959, will be subject to the restrictive provisions of this act even though benefits would be payable from an earlier date but for these amendments. No award executed after receipt of this section will provide benefits beyond November 30, 1959, if the limitations of this act apply or the evidence is insufficient to

determine that the limitations do not apply. When awards in such cases are in order the award will carry a termination date of November 30, 1959, and immediate development will be initiated, including notice to parents of right to file claim if in order.

(f) *Accrued amounts; funds from other than gratuitous benefits.* Funds in Personal Funds of Patients accounts which were derived from sources other than gratuitous benefits described in paragraph (a)(1) of this section will be disposed of in accordance with instructions in effect prior to enactment of this law. (Instruction 1, 38 U.S.C. ch. 55, Pub. L. 86-146)

[26 FR 1616, Feb. 24, 1961]

§ 3.1560 [Reserved]

§ 3.1561 Payment of benefits to children on account of the death of more than one parent in the same parental line.

(a) *Provisions of the law.* (1) Section 1 of Pub. L. 86-495 amends section 3104(b)(2) of Title 38, United States Code, to read as follows:

(2) Benefits other than insurance under laws administered by the Veterans' Administration may not be paid or furnished to or on account of any child by reason of the death of more than one parent in the same parental line; however, the child may elect one or more times to receive benefits by reason of the death of any one of such parents.

(2) Section 2 provides:

The amendment made by this Act shall apply only to cases where the death of a parent occurs after the date of enactment of this Act.

(b) *Effect of the Act.* (1) The term "more than one parent in the same parental line" refers to more than one father or more than one mother; e.g., a natural father and a stepfather. It does not include a combination of one mother and one father.

(2) Payment of more than one death benefit (exclusive of insurance) based on the deaths of two or more parents in the same parental line is prohibited by this amendment, except where the death of more than one such parent occurred before June 9, 1960.

(3) A child may elect and reelect any number of times to receive benefits by reason of the death of any one parent in the same parental line.

(4) Concurrent benefits for children entitled on the basis of the deaths of two or more parents in the same parental line which occurred prior to June 9, 1960, are not affected by this law.

(5) The finality of election to receive dependency and indemnity compensation provided by 38 U.S.C. 416(b)(2) where death occurred before January 1, 1957, is not affected by this amendment.

(c) *Effective date.* The date of enactment of this Act was June 8, 1960. It applies only to deaths which occurred on or after June 9, 1960. (Instruction 1, 38 U.S.C. 3104(b)(2), Pub. L. 86-495)

[26 FR 1618, Feb. 24, 1961]

§ 3.1562 Change in method of determining basic pay for purposes of computing dependency and indemnity compensation under Pub. L. 86-492.

(a) *Provisions of law.* Public Law 86-492 amends 38 U.S.C. 402, by adding the following new subsection:

(d) If a veteran has satisfactorily served on active duty for a period of six months or more in a rank higher than that specified in subsection (a) or (b) and was so serving in such rank within one hundred and twenty days before death in the active military, naval, or air service or before last discharge or release from active duty under conditions other than dishonorable, his basic pay shall be determined by using the appropriate rank specified in those subsections or by substituting such higher rank for the rank specified in those subsections, whichever will result in a greater amount. The determination as to whether an individual has served satisfactorily for the required period in a higher rank shall be made by the Secretary of the Department in which such higher rank was held.

(b) *Effect of the act.* (1) It liberalizes the criteria for determining basic pay for purposes of dependency and indemnity compensation in a limited number of widow cases

(2) Subsequent to June 8, 1960, the applicable service department will certify basic pay based on the rank and years of service that will provide the higher rate.

(3) The service department is responsible for determining whether the

veteran served satisfactorily in a higher rank for at least 6 months during active service and held such rank within 120 days of discharge or death.

(c) *Effective date.* The date of enactment of this act was June 8, 1960. No increase in the rate of dependency and indemnity compensation based solely on its liberalizing provisions may be made effective prior to date of enactment or date of claim, formal or informal, whichever is later.

(1) *Pending claims.* The effective date of an increased rate of dependency and indemnity compensation as to a claim pending on the date of enactment will be June 8, 1960, if evidence otherwise establishes entitlement on that date. Pending claims will include:

(i) A claim not previously adjudicated.

(ii) A previously disallowed claim pending consideration on appeal.

(iii) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry on which action was pending on date of enactment.

(iv) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry after date of enactment but within the appeal period.

(2) *New claims.* All other claims, formal or informal, received on or after June 8, 1960, will be considered initial claims for the purpose of this law and the effective date will be determined under applicable laws and regulations relating to original claims but not earlier than June 8, 1960. (Instruction 1, 38 U.S.C. 402, Pub. L. 86-492)

[26 FR 1618, Feb. 24, 1961]

§ 3.1563 [Reserved]

§ 3.1564 New effective date for payment of additional compensation for dependents.

(a) *Provisions of the law.* The law provides that section 3011, Title 38, United States Code, is amended to read:

The effective date of an award of increased compensation, dependency and indemnity compensation, or pension (amending, reopening, or supplementing a previous award, authorizing any payments not previously authorized to the individual involved) shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of evidence showing entitlement thereto, except as hereafter provided. Additional compensation on account of dependents based on the establishment of a disability rating in the percentage evaluation specified by law for the purpose shall be payable from the effective date of such rating provided the basic proof of dependents is received in the Veterans Administration within sixty days from the date of notification of such rating action.

(b) *Effect of the act*—(1) *Prior law.* Before the enactment of Public Law 86-490, the additional compensation for dependents following a rating increasing the evaluation to 50 percent or more disabling was payable from the date the evidence establishing the dependent was received.

(2) *Present law.* Under Public Law 86-490, the additional compensation will be payable from the effective date of the increased evaluation to 50 percent or more if basic proof of dependent(s) is received within 60 days from date of Veterans Administration notification of increased disability.

(3) *Basic proof*—(i) *Marriage.* The basic proof of marriage will be the evidence described in § 3.205(a) and (b) as well as the secondary evidence described in § 3.204, e.g., a copy of the public record of marriage.

(ii) *Birth and relationship.* The basic proof to establish the relationship and date of birth of a child or relationship of a parent will be the evidence described in §§ 3.209 and 3.210 as well as secondary evidence described in § 3.204. In claims involving additional compensation for dependent parents the basic proof will consist of evidence of relationship and dependency.

(4) *Substantiating evidence.* The veteran will be given 1 year in which to perfect the claim for increase for dependents, e.g., if the basic proof (record of marriage) is received within 60 days, he will have 1 year from date of Veterans Administration request to submit any substantiating evidence (such as decree of divorce) to show dissolution of a prior marriage.

(c) *Effective date.* Payment of additional compensation for a dependent by reason of Public Law 86-490 will be from the effective date of the in-

creased evaluation to 50 percent or more or the date of enactment of Public Law 86-490, whichever is the later whenever basic proof received on or after June 8, 1960, is within 60 days from date of Veterans Administration notification of increased evaluation and substantiating evidence is received within 1 year from date of Veterans Administration request therefor. (Instruction 1, 38 U.S.C. 3011, Pub. L. 86-490)

[26 FR 1619, Feb. 24, 1961]

§ 3.1565 Additional compensation for veterans having four or more children and whose disability is 50 percent or more disabling.

(a) *Provisions of the law.* (1) Section 1 of the law amends subsection (a)(1) of section 315, Title 38, United States Code, as follows:

(1) If and while rated totally disabled and—* * *

(D) Has a wife and three or more children living, $62 (plus $12 for each living child in excess of three); * * *

(G) Has no wife but three or more children living, $39 (plus $12 for each living child in excess of three); and * * *

(2) Section 2 provides:

The amendments made by this Act shall take effect on the first day of the second calendar month which begins after the date of enactment of this Act.

(b) *Effect of the act—*(1) *Removal of ceiling.* Prior to its amendment, additional compensation under 38 U.S.C. 315(a) was payable for a maximum of three children. The act removes this limitation and permits payment of additional compensation for any number of children.

(2) *Additional amounts.* Where the veteran's service-connected disability is evaluated at 100 percent, additional compensation of $12 is payable for each living child. Pro rata amounts of additional compensation are payable where the disability is evaluated from 50 percent to 90 percent, adjusted upward or downward to the nearest dollar (counting fifty cents and over as a whole dollar).

(c) *Effective date.* The law becomes effective the first day of the second calendar month which begins after the date of enactment, June 8, 1960. The provisions of this paragraph apply to claims which are allowed solely because of its liberalizing provisions and are subject to the rule that the effective date may not be earlier than August 1, 1960.

(1) *Pending claims.* Where otherwise in order, the effective date of an award as to a claim based on 50 percent or more disability pending on the date of enactment will be August 1, 1960. Pending claims will include:

(i) A claim not previously adjudicated.

(ii) A previously disallowed claim pending appellate consideration.

(iii) A previously disallowed claim reopened by receipt of any claim, evidence or inquiry on which action was pending on June 8, 1960.

(iv) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry after June 8, 1960, but within the appeal period.

(2) *New claims.* All other claims, formal or informal, received on or after June 8, 1960, will be considered initial claims for the purpose of this law and the effective date will be determined under applicable laws and regulations relating to original claims but not earlier than August 1, 1960. Where a claim identifying the benefit sought is received within one year from August 1, 1960, and evidence of entitlement is of record on August 1, 1960, benefits will be payable from August 1, 1960. (Instructions 1 and 1-A, 38 U.S.C. 315, Pub. L. 86-499)

[26 FR 1619, Feb. 24, 1961]

§ 3.1566 Additional disability compensation for certain seriously disabled veterans.

(a) *Provisions of the law.* This law amends 38 U.S.C. 314, by adding subsection (s) as follows:

(s) If the veteran has a service-connected disability rated as total, and (1) has additional service-connected disability or disabilities independently ratable at 60 per centum or more, or, (2) by reason of his service-connected disability or disabilities, is permanently housebound, then the monthly compensation shall be $265. For the purpose of this subsection, the requirement of "permanently housebound" will be considered to have been met when the veteran is substantially confined to his house (ward or clinical

areas, if institutionalized) or immediate premises due to a service-connected disability or disabilities which it is reasonably certain will remain throughout his lifetime.

(b) *Effect of the act.* This act establishes a new statutory rate of disability compensation. It provides a monthly rate of compensation of $265 for wartime disability and $212 for peacetime disability. These rates, with additional allowances for dependents, are applicable to two types of cases:

(1) A veteran who has a service-connected disability rated as total and has additional service-connected disability or disabilities independently ratable at 60 percent or more.

(i) "A service-connected disability rated as total" means a single disability rated 100 percent under regular schedular evaluations without employment of exceptional provisions for temporary application as in paragraphs, 28, 29 and 30, pages 12, 13, and 14, 1945 Schedule for Rating Disabilities (Loose Leaf Edition).

(ii) "Additional service-connected disability or disabilities independently ratable at 60 per centum or more" means one disability or a combination of disabilities which, separate and distinct from the total disability, have an evaluation of 60 percent or more, the amputation rule being observed where applicable. The fact that these separate disabilities and the total disability result from a common etiological agent, for example, one injury or rheumatoid arthritis, will not preclude entitlement under this subsection. Total ratings by reason of "individual unemployability" are based on all service-connected disabilities, therefore, there can be no "additional" disability in these cases for the purpose of this act.

NOTE: Where the separate 60 percent disability also establishes entitlement under 38 U.S.C. 314(k) payment will be based on subsections (j) plus (k) since this affords the greater benefit. In such cases subsection (s) will not be applied.

(2) A veteran who has a service-connected disability rated as total and by reason of his service-connected disability or disabilities, is permanently housebound.

(i) A veteran will be considered housebound when he is substantially confined to dwelling and immediate premises or, if institutionalized, to ward or clinical areas. Ability to make short excursions from dwelling, hospital or clinic assisted or unassisted, is not inconsistent with "substantial confinement." A veteran meeting the foregoing condition will be considered "permanently housebound" when it is reasonably certain that the disability or disabilities and resultant confinement will remain throughout his lifetime. Such permanency will be determined on the facts in each case.

(ii) "By reason of his service-connected disability or disabilities" requires that the restriction of activity be a direct result of the service-connected disability or disabilities, independent of any coexisting disablement due to nonservice-connected conditions. It cannot be a matter of election or choice; there must be a direct relationship between the nature and extent of the service-connected disabilities and the limitation of activities.

(c) *Effective date.* The law was approved July 14, 1960, and becomes effective September 1, 1960. No benefit based solely on the liberalizing provisions of this law may be effective prior to September 1, 1960.

(1) *Pending claims.* Where otherwise in order the effective date of an award as to a claim pending on the date of approval of the act will be September 1, 1960. For the purpose of this subparagraph a pending claim will include:

(i) A claim not previously adjudicated.

(ii) A previously disallowed claim pending consideration on appeal.

(iii) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry on which action was pending on July 14, 1960.

(iv) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry after July 14, 1960, but within the appeal period.

(2) *New claims.* Claims, formal or informal, received on or after July 14, 1960, will be considered initial claims for the purpose of this act and the effective date will be determined under applicable laws and regulations relating to original claims but not earlier than September 1, 1960.

(i) Where a claim identifying the benefit sought is received within 1 year from September 1, 1960, and evidence of entitlement is of record on or before September 1, 1960, benefits will be payable from September 1, 1960.

(ii) For the purposes of this act, a report of Veterans Administration examination or Veterans Administration hospitalization will be accepted as a claim if the report relates to a disability which may establish entitlement to this benefit. (Instructions 1 and 1-A, 38 U.S.C. 314, Pub. L. 86-663) (72 Stat. 1114; 38 U.S.C. 210)

[26 FR 1620, Feb. 24, 1961]

§ 3.1567 Title 38, United States Code 560, 561 and 562, as changed by Public Law 87-138, Medal of Honor Roll; persons eligible and provisions relating to special pension.

(a) *Effect of the act.* Public Law 87-138 increases the special monthly pension rate for Medal of Honor holders from $10 to $100 per month; lowers the age requirement from 65 to 50; and eliminates the requirement of honorable discharge from service. The benefit is payable in addition to any other gratuitous Veterans Administration benefit and is based upon certification from the appropriate service department that the Medal of Honor holder has been entered on the special Medal of Honor Roll.

(b) *Effective date.* Awards under Public Law 87-138 will be prepared by Adjudication Divisions in the monthly amount of $100 effective as of the date of application, but not prior to September 1, 1961. (Instruction 1, Pub. L. 87-138)

[26 FR 8454, Sept. 8, 1961]

§ 3.1568 Increased dependency and indemnity compensation in certain wartime cases.

(a) *Effect of the act.* The effect of Public Law 87-268 is to authorize payment of increased dependency and indemnity compensation to certain wartime beneficiaries. Only cases in which a widow and five or more children are entitled to dependency and indemnity compensation and cases in which one child of a Spanish-American War veteran or of a veteran of prior wars is entitled to benefits will be affected by this law. The monthly rate of dependency and indemnity compensation payable to a claimant will be not less than the rate of death pension the claimant would be entitled to if the veteran's death had occurred under circumstances which would permit payment of death pension. However, the benefit payable in applicable cases will be dependency and indemnity compensation and not death pension. The law applies to any case in which the claimant is receiving or is entitled to receive dependency and indemnity compensation irrespective of whether the veteran's death occurred before, on, or after December 31, 1956.

(b) *Claims*—(1) *Previously adjudicated cases.* A claim (formal or informal) for increased benefits under this law (38 U.S.C. 412(b)) will be required when the claimant is in receipt of dependency and indemnity compensation.

(2) *Original claims.* An original application (VA Form 21-534) will be accepted as including a claim under this law and a specific or separate claim is not required. Claims pending on October 1, 1961, will be considered original claims and no further application will be required.

(c) *Apportioned cases*—(1) *Claims.* Where a widow's award of dependency and indemnity compensation is apportioned for one or more children who are not in her custody a claim for increase filed by the fiduciary of a child will be considered a claim under this law on behalf of the widow and the other children. If such a claim is filed necessary request for evidence of the widow's annual income and net worth will be addressed to the widow and not to the fiduciary of the child.

(2) *Awards.* Should an increased rate be payable under this law in an apportionment case the award will be apportioned under § 3.461, pertaining to dependency and indemnity compensation and not under § 3.460, which relates to death pension.

(d) *Effective dates.* The date of enactment of this act was September 21, 1961. The law is effective from October 1, 1961. No increase in monthly rates of dependency and indemnity compensation based solely on its provi-

sions may be made effective prior to October 1, 1961.

(1) In the case of any person receiving dependency and indemnity compensation on October 1, 1961, increased benefits provided by this law shall be payable from October 1, 1961, if claim is filed within 1 year from that date and evidence of entitlement is of record or received within 1 year from the date of request.

(2) Any claim pending on October 1, 1961, will be considered an original claim and no further application will be required. The effective date of dependency and indemnity compensation under this law will be October 1, 1961, if evidence of entitlement is of record or received within 1 year from date of request.

(3) As to all other claims, formal or informal, the effective date of dependency and indemnity compensation under this law will be determined under applicable laws and regulations relating to original claims and claims for increase but not earlier than October 1, 1961. (Instruction 1, 38 U.S.C. 412, Pub. L. 87-268)

[26 FR 10552, Nov. 9, 1961]

§ 3.1569 [Reserved]

§ 3.1570 Instructions relating to rates of compensation to be assigned certain veterans with service-connected blindness of one eye and non-service-connected blindness of the other eye or with service-connected loss or loss of use of one kidney and non-service-connected involvement of the other kidney.

(a) *Provisions of the law.* A new section numbered 360 has been added to chapter 11, title 38, United States Code. This new section reads as follows: "Where any veteran has suffered (1) blindness in one eye as a result of service-connected disability and has suffered blindness in the other eye as a result of nonservice-connected disability not the result of his own willful misconduct, or (2) has suffered the loss or loss of use of one kidney as a result of service-connected disability, and has suffered severe involvement of the other kidney such as to cause total disability, as a result of nonservice-connected disability not the result of his own willful misconduct, the Administrator shall assign and pay to the veteran concerned the applicable rate of compensation under this chapter as if his blindness in both eyes or such bilateral kidney involvement were the result of service-connected disability."

(b) *Effects of the act.* Prior to this law, if a veteran entered service with blindness of one eye and incurred blindness in the other eye as a result of service, he would be entitled to the statutory rates of compensation payable for service-connected blindness of both eyes. However, if a veteran entered service with two good eyes, incurred blindness of one eye in service, and then subsequent to service suffered blindness of the other eye as a result of nonservice-connected cause, he would be entitled to compensation only for unilateral blindness. This act now equates the two situations so that in the latter case the veteran is now entitled to the statutory rates of compensation payable for service-connected blindness of both eyes. Similarly, prior to this law, if a person entered service with loss or loss of use of one kidney and while in service incurred severe involvement of the other kidney, such veteran could be given a total rating for compensation. However, where a person incurred the loss or loss of use of one kidney in service and subsequent to service incurred severe involvement of the other kidney not the result of service-connected disability, the rating for compensation could not be more than 30 percent, the rating for unilateral involvement only. Under this act such person may receive a total rating for compensation purposes or a statutory rate under 38 U.S.C. 314(l)-(s).

(1) *Possible entitlement to grant for an automobile under 38 U.S.C. Ch. 39.* Under this law if a veteran is granted statutory rates of compensation for blindness of both eyes incurred in World War II or the Korean conflict he would have potential entitlement to a grant for an automobile or other conveyance under 38 U.S.C. Ch. 39. However, in order for entitlement to be actually established, a claim for such benefits must be filed within the time limits prescribed by 38 U.S.C. 1905.

(2) *Possible entitlement to assistance in obtaining specially adapted housing under 38 U.S.C. Ch. 21.* Certain veterans granted the statutory rates of compensation for bilateral blindness under this law, may also have potential entitlement to assistance in obtaining specially adapted housing under 38 U.S.C. Ch. 21, if in addition to having blindness in both eyes with light perception only, they also have service-connected loss or loss of use of one lower extremity, and locomotion without the aid of a wheelchair is precluded.

(c) *Effective date.* The law was approved August 28, 1962, and becomes effective August 28, 1962. No benefit based solely on the liberalizing provisions of this law may be effective prior to August 28, 1962.

(1) *Pending claims.* Where otherwise in order the effective date of an award as to a claim pending on the date of approval of this act will be August 28, 1962. For the purposes of this subparagraph, a pending claim will include:

(i) A claim not previously adjudicated.

(ii) A previously disallowed claim pending consideration on appeal.

(iii) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry on which action was pending on August 28, 1962.

(iv) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry after August 28, 1962, but within the appeal period.

(2) *New claims.* Claims, formal or informal, received on or after August 28, 1962, will be considered initial claims for the purpose of this act and the effective date will be determined under applicable laws and regulations relating to original claims but not earlier than August 28, 1962.

(i) Where a claim identifying the benefit sought is received within 1 year from August 28, 1962, and evidence of entitlement is of record on or before August 28, 1962, benefits will be payable from August 28, 1962.

(ii) For the purposes of this act a report of Veterans Administration examination or Veterans Administration hospitalization will be accepted as a claim if the report relates to a disability which may establish entitlement to this benefit. (Instruction 1, 38 U.S.C. 360, Pub. L. 87-610.)

[27 FR 9474, Sept. 25, 1962]

§ 3.1571 Increased compensation.

(a) *Effect of the law.* Public Law 87-645 provides increased monthly compensation rates to all veterans in receipt of service-connected compensation except to those receiving only statutory awards for arrested tuberculosis under 38 U.S.C. 314(q) or payments made under 38 U.S.C. 314(k). It also provides for those entitled to an increase on October 1, 1962, an additional lump-sum adjusted amount for that month equal to three times the increase in rate.

(b) *Specific provisions.* (1) Section 1(a) of Public Law 87-645 provides for increases in the disability compensation rates payable to veterans disabled 10 to 100 percent and increases in special monthly compensation. The new rates are adjusted upward or downward to the nearest dollar, counting 50 cents and over as a whole dollar.

(i) The maximum rate of wartime compensation, excluding dependency allowance, is increased to $725 per month. Special monthly compensation for specific injuries under section 314 (l) through (n) are increased to $340, $390 and $440, respectively. The rate for section 314(r) is increased to $200 and section 314(s) is increased to $290. No increase is provided in the present rate of $47 per month under section 314(k), or in the rate of $67 under section 314(q).

(ii) The rates of compensation for service-connected disability based upon service in the Regular Establishment during time of peace are 80 percent of the rates of compensation for disability incurred in time of war, also further adjusted upward or downward to the nearest dollar.

(2) Section 1(b) provides that the Administrator may adjust administratively consistent with increases authorized by section 1(a) the rates of disability compensation payable and protected under laws enacted prior to Title 38, United States Code.

(3) Section 4 of Public Law 87-645 determines the effective date of this act to be October 1, 1962. No payments

shall be made by reason of this act for any period prior to this effective date. However, section 4 also provides an additional adjustment of three times the monthly increase, for October only, for those entitled to an increase in compensation on October 1, 1962, computed on the increase payable for that date.

(c) *Effective date.* Section 4 of Public Law 87-645 provides that this act shall take effect on October 1, 1962. No payments will be made by reason of this act for any period before such effective date. The effective date of awards will be in accordance with the provisions of controlling regulations, provided that in no event will benefits under the cited act be awarded for any period prior to October 1, 1962. (Instruction 1, 38 U.S.C. 314, Pub. L. 87-645)

[27 FR 9652, Sept. 29, 1962]

§ 3.1572 Instructions relating to the payment of additional aid and attendance allowance under 38 U.S.C. 314(r) during periods of hospitalization at Government expense.

(a) *Provisions of the law.* (1) Section 1(a)(15) and section 2 of Public Law 87-645 provide for the amendment of section 314(r) of Title 38, United States Code, to read as follows:

If any veteran, otherwise entitled to the compensation authorized under subsection (o), or the maximum rate authorized under subsection (p), is in need of regular aid and attendance, he shall be paid, in addition to such compensation, a monthly aid and attendance allowance at the rate of $200 per month, subject to the limitations of section 3203(f) of this title. For the purposes of section 334 of this title, such allowance shall be considered as additional compensation payable for disability.

(2) Section 2 of the act also provides for the addition of subsection (f) to section 3203 of Title 38, United States Code as follows:

Where any veteran in receipt of an aid and attendance allowance described in section 314(r) of this title is hospitalized at Government expense, such allowance shall be discontinued from the first day of the second calendar month which begins after the date of his admission for such hospitalization for so long as such hospitalization continues. In case a veteran covered by this subsection leaves a hospital against medical advice and is thereafter readmitted to hospitalization, such allowance shall be discontinued from the date of such readmission for so long as such hospitalization continues.

(b) *Effects of the act.* This act has the effect of permitting payment to those otherwise entitled of the additional aid and attendance allowance authorized by 38 U.S.C. 314(r) during certain periods during which the entitled veteran is hospitalized at Government expense. Prior to the effective date of this act the additional aid and attendance allowance authorized by 38 U.S.C. 314(r) was not payable for any period when the veteran was hospitalized at United States Government expense.

(c) *Adjustments under the law.* (1) On and after October 1, 1962, the effective date of this act, an award of additional aid and attendance allowance under 38 U.S.C. 314(r) will be discontinued from the first day of the second calendar month which begins after the date of admission for such hospitalization for so long as such hospitalization continues. The effective date of reduction will not be extended by reason of time spent on leave, furlough or other authorized absence.

(2) Where a veteran subject to this provision leaves a United States Government hospital against medical advice (including disciplinary discharges) and is thereafter readmitted to such hospitalization, the additional allowance authorized by 38 U.S.C. 314(r) shall be discontinued from the date of such readmission for so long as such hospitalization continues.

(3) Where a veteran is subject to the discontinuance provisions of this act, a temporary authorized absence from the hospital of less than 30 days will not require adjustment of the award. The additional allowance for regular aid and attendance for such periods will be authorized after the veteran has been discharged from the hospital. Where a veteran is placed on authorized absence of 30 days or more, the additional allowance will be restored effective the date of departure from the hospital, if otherwise in order.

(4) Where entitlement under 38 U.S.C. 314(r) is otherwise in order, payments of the additional aid and attendance allowance discontinued be-

cause of hospitalization under the provisions of this act will be restored effective the date of release from the hospital whether discharge or release is approved or unapproved.

(d) *Veterans hospitalized commencing in September 1962.* (1) The additional aid and attendance allowance authorized by this law is payable for veterans who entered into a period of hospitalization in September 1962 and who are hospitalized on October 1, 1962. Awards may be adjusted to authorize the additional $200 commencing October 1, 1962.

(2) Where award action is required to reduce the veteran's award because of hospitalization during the month of September 1962, the additional aid and attendance allowance will be discontinued effective the date of entrance into the hospital. The additional $200 will be authorized from October 1 through October 31, 1962.

(e) *Effective date of the act.* Section 4 of Public Law 87-645 provides that this act shall take effect on the first day of the first calendar month which begins after the date of enactment of this act. No payments shall be made by reason of this act for any period before such effective date. The effective date of awards will be in accordance with the provisions of controlling Veterans Administration regulations, provided that in no event will benefits under the cited act be awarded for any period prior to October 1, 1962. (Instruction 2, 38 U.S.C. 314(r) and 3203, Pub. L. 87-645)

[27 FR 9653, Sept. 29, 1962]

§ 3.1573 Presumption of service-connected multiple sclerosis under 38 U.S.C. 312(4) as amended by section 3, Public Law 87-645.

(a) *Provisions of the law.* Section 3 of the law amends section 312(4) of Title 38, United States Code, by striking out "three" and inserting in lieu thereof "seven." Section 312 thus reads in pertinent part:

> For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, in the case of any veteran who served for ninety days or more during a period of war—
>
> * * * * *
>
> (4) multiple sclerosis developing a 10 per centum degree of disability or more within seven years from the date of separation from such service;
>
> * * * * *
>
> shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service.

(b) *Effect of the act.* The law extends the presumptive period of service connection from 3 to 7 years following wartime service. It is applicable to both disability and death claims.

(c) *Effective date.* The law is effective October 1, 1962. No benefit based solely on the liberalizing provisions of this law may be made effective prior to October 1, 1962.

(1) *Pending claims.* The effective date of an award under this act as to a claim pending on the effective date of the act will be October 1, 1962, if evidence otherwise establishes entitlement on that date. For the purpose of this subparagraph, a pending claim will include:

(i) A claim not previously adjudicated.

(ii) A previously disallowed claim pending consideration on appeal.

(iii) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry on which action was pending on October 1, 1962.

(iv) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry on or after October 1, 1962, but within the appeal period.

(2) *New claims.* A claim is required in all cases not in a pending status.

(i) Where a claim identifying the benefit sought is received within 1 year after October 1, 1962, and evidence of entitlement was of record on or before that date, compensation will be payable effective October 1, 1962.

(ii) For the purposes of this act, a report of Veterans Administration examination or Veterans Administration hospitalization will be accepted as a

claim if the report relates to multiple sclerosis.

(iii) All other claims, formal or informal, received on or after October 1, 1962, will be considered initial claims for the purposes of this law and the effective date of benefits will be determined under the applicable law and Veterans Administration regulations relating to original claims. (Instruction 3, 38 U.S.C. 312, Pub. L. 87-645)

[27 FR 9653, Sept. 29, 1962]

§ 3.1574 Denial of benefits because of conduct of widow.

(a) *Provisions of section 1 of the law.* Section 1 of the law amends section 101 of Title 38, United States Code, by revising subsection (3) to read as follows:

(3) The term "widow" means (except for purposes of Chapter 19 of this title) a woman who was the wife of a veteran at the time of his death, and who lived with him continuously from the date of marriage to the date of his death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the wife) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after enactment of the 1962 amendment to this paragraph, lived with another man and held herself out openly to the public to be the wife of such other man.

(b) *Effect of section 1 of the act.* Section 1 is similar to but broader than our "inference of remarriage" (or "presumption of remarriage") rule, which has been in effect for many years. Under our rule an inference of remarriage is held to exist when there is proof of each of the following:

(1) A cohabitation by the widow with a man as man and wife; and

(2) A "holding out" by the two persons to the general community in which they reside that they are husband and wife (which generally is embraced in the requisite cohabitation); and

(3) A general reputation in such community that they are married to each other.

The inference is not applied where there is evidence that there could not be a legal marriage between the claimant widow and her cohabitant because of an impediment, such as a prior subsisting marriage of the cohabitant. An identical rule is applied in determining whether there is an inference of marriage of the child of a veteran. Section 1 of Public Law 87-674 provides for denial of benefits except gratuitous insurance to a widow where, since the death of the veteran and subsequent to September 19, 1962, date of enactment of this law, she has lived with another man and held herself out openly to the public to be the wife of such other man. Therefore, reputation will no longer be a requirement for application of the bar to benefits and the existence of an impediment to marriage will be immaterial, except as to gratuitous National Service Life insurance benefits and cases involving an inference of marriage of the child of a veteran. This law effects no change in the present administrative rule and practice pertaining to these excepted cases.

(c) *Adjudication and vocational rehabilitation and education procedures.* The restrictive provisions of section 1 are for prospective application and have no retroactive effect. They will apply only in cases where the veteran's widow has lived with another man since the date of enactment of this law and to benefits other than gratuitous National Service life insurance. A relationship which is secretive, or which consists of occasional short interludes (such as overnight, over a weekend, or for a week) or which is otherwise ostensibly illicit in nature will not be a bar to benefits. The parenthetical statement "(in cases not involving remarriage)" does not require a definite determination of lack of marriage before invoking the bar to benefits.

(d) *Effective date.* Section 1 of Public Law 87-674 is effective from date of enactment, September 19, 1962. The effective date of discontinuance of benefits based on the new statutory standard in this law will be the day preceding date of commencement of the relationship but not prior to September 19, 1962. The effective date of discontinuance of benefits based on the administrative "inference of remarriage" rule will be the day preceding date of commencement of the relationship or date of last payment,

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whichever is later but in no event later than September 19, 1962. Where additional benefits are payable to a widow for periods prior to inception of the relationship, any amounts paid for periods after that date will be recouped from such additional payment. (Instruction 1, 38 U.S.C. 101, Pub. L. 87-674.)

[27 FR 9945, Oct. 10, 1962]

§ 3.1575 Restoration of benefits for widows and children upon annulment of their remarriage or marriage.

(a) *Provisions of the law.* (1) Section 2 of the law amends 38 U.S.C. 103 by adding at the end thereof subsections (d) and (e) as follows:

(d) The remarriage of the widow of a veteran shall not bar the furnishing of benefits to her as the widow of the veteran if the remarriage is void, or has been annulled by a court with basic authority to render annulment decrees unless the Veterans' Administration determines that the annulment was secured through fraud by either party or collusion.

(e) The marriage of a child of a veteran shall not bar recognition of such child as the child of the veteran for benefit purposes if the marriage is void, or has been annulled by a court with basic authority to render annulment decrees unless the Veterans' Administration determines that the annulment was secured through fraud by either party or collusion.

(2) Section 3 of the law amends 38 U.S.C. 3010 by adding at the end thereof subsection (f) as follows:

(f) The effective date of the award of benefits to a widow or of an award or increase of benefits based on recognition of a child, upon annulment of a marriage shall be the date the judicial decree of annulment becomes final if a claim therefor is filed within one year from the date the judicial decree of annulment becomes final; in all other cases the effective date shall be the date the claim is filed.

(b) *Effect of sections 2 and 3 of the act.* (1) Section 2 of the act retains the provision, formerly in 38 U.S.C. 101(3), that remarriage of the widow of a veteran shall not bar payment of benefits to her as the widow of the veteran if the purported remarriage is void. In addition, it provides for restoration of benefits to the widow of a veteran if her remarriage has been annulled by a court with basic authority to render annulment decrees without regard as to whether the remarriage was void or only voidable. It also provides that the marriage of a veteran's child shall not bar the payment of benefits to or for such child if the child's marriage is void, or has been annulled by a court with basic authority to render annulment decrees. The only exception to these provisions is where the Veterans Administration determines that the annulment was obtained through fraud by either party or by collusion.

(2) A claim for benefits is required under section 3 of the act. This section also establishes effective dates for benefits awarded solely by reason of the liberalizing provisions of the second section of the law.

(c) *Claims.* A claim (formal or informal) for benefits under this law will be required. Pending claims for benefits or restoration of benefits will be considered claims under this law and no further claim will be required. Pending claims will include:

(1) A claim not previously adjudicated.

(2) A previously disallowed claim pending appellate consideration.

(3) A previously disallowed claim reopened by receipt of any claim, evidence or inquiry on which action was pending on September 19, 1962.

(4) A previously disallowed claim reopened by the receipt of any claim, evidence or inquiry after September 19, 1962, but within the appeal period.

(d) *Effective date.* This act is effective from date of enactment, September 19, 1962. No benefit based solely on its liberalizing provisions may be effective prior to September 19, 1962.

(1) *Annulment granted.* Under this law where a judicial decree of annulment has been granted the effective date of an award of benefits to a widow or of an award or increase of benefits based on recognition of a child will be the date the judicial decree of annulment becomes final if claim therefor is filed within 1 year from such date, but such effective date shall not be prior to September 19, 1962; in all other cases the effective date of benefits under this law shall be the date the claim is filed.

(2) *Void marriage or remarriage; no annulment decree granted.* Where an

annulment decree has not been obtained but the Veterans Administration determines in a legal opinion that the marriage of a child or remarriage of a widow is void the effective date of an award or increased award will be the date the child or widow ceased to cohabit with the other party to the void marriage or the date the Veterans Administration receives the evidence showing that the marriage was void, whichever is later. (See § 3.402.) (Instruction 2, 38 U.S.C. 103 and 3010, Pub. L. 87-674)

[27 FR 9946, Oct. 10, 1962]

Subpart B—Burial Benefits

AUTHORITY: 72 Stat. 1114, 1169, as amended; 38 U.S.C. 210, 902-905.

§ 3.1600 Payment of burial expenses of deceased veterans.

For the purpose of payment of burial expenses the term "veteran" includes a person who died during a period deemed to be active military, naval or air service under § 3.6(b)(6) (Public Law 89-360). The period of active service upon which the claim is based must have been terminated by discharge or release from active service under conditions other than dishonorable.

(a) *Wartime veterans.* When a veteran of any war dies, an amount not to exceed $300 ($1,100 if death is service-connected) (where entitlement is based on § 3.8 (c) or (d), at a rate in Philippine pesos equivalent to $150 or $550 if death is service-connected) is payable on the burial and funeral expenses and transportation of the body to the place of burial, if otherwise entitled within the further provisions of §§ 3.1600 through 3.1611. For this purpose the period of any war is as defined in § 3.2, except that World War I extends only from April 6, 1917, through November 11, 1918, or if the veteran served with the United States military forces in Russia, through April 1, 1920. (38 U.S.C. 902; 907; 107(a))

(b) *Peacetime veterans.* The statutory burial allowance authorized by paragraph (a) of this section is payable based on service of a veterans rendered during other than a war period:

(1) If he (or she) was discharged or retired from active service for a disability incurred or aggravated in line of duty. The official service department records showing that the veteran was discharged or released from service for disability incurred in line of duty will be accepted for this purpose, notwithstanding, that the Veterans Administration has determined, in connection with a claim for monetary benefits, that the disability was not incurred in line of duty; or

(2) If he (or she) was at the time of his (or her) death in receipt of, or but for receipt of retirement pay would have been entitled to receive disability compensation; or

(3) Where the official service records show discharge for a reason other than disability but also show a service-connected disability for which the veteran was receiving treatment at time of discharge and the Veterans Administration determines that the facts were sufficient to have warranted a discharge for disability incurred in line of duty. If the veteran was not under treatment for such disability at time of discharge, entitlement exists if the Veterans Administration determines that the disability in medical judgment was of such character, duration and degree as to have justified a discharge for disability incurred in line of duty; or

(4) If he (or she) dies of a service-connected disability (38 U.S.C. 902).

(c) *Death while properly hospitalized.* If a person dies while properly hospitalized by the Veterans Administration, there is payable an allowance not to exceed $300 ($1,100 if he or she died of a service-connected disability) for the actual cost of funeral and burial, and an additional amount for transportation of the body to the place of burial. See § 3.1605. (38 U.S.C. 903; 907)

(d) *Determinations.* Where a claim for burial allowance would be or has been disallowed because the service department holds that the disability was not incurred in line of duty and evidence is submitted which permits a different finding, the decision of the service department is not binding and the Veterans Administration will de-

termine line of duty. The burden of proof will rest upon the claimant.

(e) *Persons not included.* Except as provided in § 3.1605(c) burial allowance is not payable in the following cases:

(1) A discharged or rejected draftee or selectee.

(2) A member of the National Guard who reported to camp in answer to the President's call for World War I or World War II service, but who, when medically examined was not finally accepted for active military service.

(3) An alien who does not come within the purview of § 3.7(b).

(4) Philippine Scouts enlisted on or after October 6, 1945, under section 14, Public Law 190, 79th Congress.

(5) Temporary members of the Coast Guard Reserve.

(f) *Plot or interment allowance.* Where a veteran dies for whom eligibility for the burial allowance under this section is warranted and is not buried in a national cemetery or other cemetery under the jurisdiction of the United States (except where the higher rate of burial allowance is payable because of service-connected death), there may be paid an additional amount not to exceed $150 (where entitlement is based on § 3.8 (c) or (d), at a rate in Philippine pesos equivalent to $75), as a plot or interment allowance for expenses actually incurred. The allowance will be payable to the person or entity who incurred the expenses (38 U.S.C. 903(b); Pub. L. 93-43, 87 Stat. 75).

(g) *Transportation expenses for burial in national cemetery.* Where a veteran dies as the result of a service-connected disability, or at the time of death was in receipt of disability compensation (or but for the receipt of military retired pay or non-service-connected disability pension would have been entitled to disability compensation at time of death) there is payable, in addition to the burial allowance (either $300 or $1,100 if cause of death was service connected), an additional amount for payment of the cost of transporting the body to a national cemetery for burial. This amount may not exceed the cost of transporting the body from the veteran's place of death to the national cemetery nearest the veteran's last place of residence in which burial space is available. The amounts payable under this paragraph are subject to the limitations set forth in §§ 3.1604 and 3.1606.

[26 FR 1620, Feb. 24, 1961, as amended at 31 FR 14455, Nov. 10, 1966; 32 FR 3742, Mar. 4, 1967; 38 FR 30106, Nov. 1, 1973; 41 FR 38771, Sept. 13, 1976; 44 FR 22721, Apr. 17, 1979]

CROSS REFERENCES: Definitions; veterans See § 3.1(d).

Protection; burial allowance. See § 3.954.

§ 3.1601 Claims and evidence.

(a) *Claims.* Claims for reimbursement or direct payment of burial and funeral expenses, transportation of the body, and plot or interment allowance, must be received by the Veterans' Administration within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of his (or her) discharge from service, but after his (or her) death the discharge has been corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from date of correction of the discharge. (38 U.S.C. 904).

(1) Claims for burial allowance may be executed by:

(i) The funeral director, if entire bill or any balance is unpaid (if unpaid bill is under $300 only amount of unpaid balance will be payable to the funeral director); or

(ii) The individual whose personal funds were used to pay burial, funeral, and transportation expenses; or

(iii) The executor or administrator of the estate of the veteran or the estate of the person who paid the expenses of the veteran's burial or provided such services. If no executor or administrator has been appointed then by some person acting for such estate who will make distribution of the burial allowance to the person or persons entitled under the laws governing the distribution of interstate estates in the State of the decedent's personal domicile.

(2) Claims for the plot or interment allowance (except for claims filed by a State or an agency or political subdivision thereof, under § 3.1604(d)) may be executed by:

(i) The funeral director, if he (or she) provided the plot or interment services, or advanced funds to pay for them, and if the entire bill for such or any balance thereof is unpaid (if unpaid balance is less than $150 only the amount of the unpaid balance thereof will be payable to the funeral director); or

(ii) The person(s) whose personal funds were used to defray the cost of the plot or interment expenses; or

(iii) The person or entity from whom the plot was purchased or who provided interment services if the bill for such is unpaid in whole or in part. An unpaid bill for a plot will take precedence in payment of the plot or interment allowance over an unpaid bill for other interment expenses or a claim for reimbursement for such expenses. Any remaining balance of the $150 allowance may then be applied to interment expenses; or

(iv) The executor or administrator of the estate of the veteran or the estate of the person who bore the expense of the plot or interment expenses. If no executor or administrator has been appointed, claim for the plot or interment allowance may be filed as provided in paragraph (a)(1)(iii) of this section for the burial allowance.

(3) For the purposes of the plot and interment allowance "plot" or "burial plot" means the final disposal site of the remains, whether it is a grave, mausoleum vault, columbarium niche, or other similar place. Interment expenses are those costs associated with the final disposition of the remains and are not confined to the acts done within the burial grounds but may include the removal of bodies for burial or interment.

(b) *Supporting evidence.* Evidence required to complete a claim for the burial allowance and the plot or interment allowance, when payable, (including a reopened claim filed within the 2-year period) must be submitted within 1 year from date of the Veterans Administration request for such evidence. In addition to the proper claim form the claimant other than a § 3.1604(d) claimant is required to submit:

(1) *Statement of account.* Preferably on funeral director's or cemetery owner's billhead showing name of the deceased veteran, the plot or interment costs, and the nature and cost of services rendered, and unpaid balance.

(2) *Receipted bills.* Must show by whom payment was made and show receipt by a person acting for the funeral director or cemetery owner.

(3) *Proof of death.* In accordance with § 3.211.

(4) *Waivers from all other distributees.* Where expenses of a veteran's burial, funeral, plot, interment and transportation were paid from funds of the veteran's estate or some other deceased person's estate and the identity and right of all persons to share in that estate have been established, payment may be made to one heir upon unconditional written consent of all other heirs.

[38 FR 30106, Nov. 1, 1973, as amended at 41 FR 38771, Sept. 13, 1976; 44 FR 22722, Apr. 17, 1979; 44 FR 58710, Oct. 11, 1979]

§ 3.1602 Special conditions governing payments.

(a) *Two or more persons expended funds.* If two or more persons have paid from their personal funds toward the burial, funeral, plot, interment and transportation expenses, the burial and plot or interment allowance will be divided among such persons in accordance with the proportionate share paid by each, unless waiver is executed in favor of one of such persons by the other person or persons involved. The person in whose favor payment is waived will not be allowed a sum greater than that which was paid by such person. (See § 3.1601(a)(3).)

(b) *Person who performed services.* A person who performed burial, funeral, and transportation services or furnished the burial plot will have priority over claims of persons whose personal funds were expended.

(c) *Partial payment.* Where partial payment of the expenses of the burial, funeral and transportation of the body are made from funds of the veteran's estate and the balance from the per-

sonal funds of another person, the claim of the other person has priority.

(d) *Escheat.* No payment of burial allowance or plot or interment allowance will be made where it would escheat.

[26 FR 1521, Feb. 24, 1961, as amended at 38 FR 30107, Nov. 1, 1973; 41 FR 38771, Sept. 13, 1976]

§ 3.1603 Unclaimed bodies.

If the body of a deceased veteran is unclaimed, there being no relatives or friends to claim the body, the amount provided for burial and plot or interment allowance will be available for the burial upon receipt of a claim accompanied by a statement showing what efforts were made to locate relatives or friends. The question of escheat of any part of such deceased veteran's estate is not a factor in such a claim. Burial allowance may be authorized for cost of disinterment and reburial of unclaimed remains originally accorded pauper burial but not for initial expenses of a burial in a potter's field. Burial in a prison cemetery is not considered a pauper burial.

[38 FR 30107, Nov. 1, 1973]

§ 3.1604 Payments from non-Veterans Administration sources.

(a) *Contributions or payments by public or private organizations.* When contributions or payments on the burial expenses have been made by a State, any agency or political subdivision of the United States or of a State, or the employer of the deceased veteran only the difference between the entire burial expenses and the amount paid thereon by any of these agencies or organizations, not to exceed $300 ($1,100 if death was service connected), will be authorized. Contributions or payments by any other public or private organization such as a lodge, union, fraternal or beneficial organization, society, burial association or insurance company, will bar payment of the burial allowance if such allowance would revert to the funds of such organization or would discharge such organization's obligation without payment.

(1) A contract or policy which provides for payment at death of a specified amount to a designated beneficiary other than the person rendering burial and funeral services will not bar payment of the burial allowance to the beneficiary even though the organization issuing the contract or policy retains an option to make payment direct to the person rendering burial and funeral services.

(2) The provisions of this paragraph do not apply to contributions or payments on the burial and funeral expenses which are made for humanitarian reasons if the organization making the contribution or payment is under no legal obligation to do so.

(b) *Payment by Federal agency.* (1) Where a veteran dies while in employment covered by the United States Employees' Compensation Act, as amended, or other similar laws specifically providing for payment of the expenses of funeral, transportation, and interment out of Federal funds, burial allowance will not be authorized by the Veterans Administration.

(2) A provision in any Federal law or regulation permitting the application of funds due or accrued to the credit of the deceased toward the expenses of funeral, transportation and interment (such as Social Security benefits), as distinguished from a provision specifically prescribing a definite allowance for such purpose, will not bar payment of the burial allowance. In such cases only the difference between the total burial expense and the amount paid thereon under such provision, not to exceed $300 will be authorized.

(3) Burial allowance is not payable for deaths in active service, or during the duty periods set forth in § 3.6, or for other deaths where the cost of burial and transportation is paid by the service department.

(c) *Payment of plot or interment allowance by public or private organization except as provided for by paragraph (d) of this section.* Where any part of the plot or interment expenses have been paid or assumed by a State, any agency or political subdivision of a State, or the employer of the deceased veteran, only the difference between the total amount of such expenses and the amount paid or assumed by any of

these agencies or organizations, not to exceed $150, will be authorized.

(d) *Payment of the plot or interment allowance to a State or political subdivision thereof*—(1) *Conditions warranting payment.* All of the following conditions must be met:

(i) The plot or interment allowance is payable based on the service of the deceased veteran. See § 3.1600.

(ii) The deceased veteran is buried in a cemetery or a section thereof which is used solely for the interment of persons eligible for burial in a national cemetery.

(iii) The cemetery or the section thereof where the veteran is buried is owned by the State, or an agency or political subdivision of the State claiming the plot or interment allowance.

(iv) No charge is made by the State, or an agency or political subdivision of the State for the cost of the plot or interment.

(v) The veteran was buried on or after October 1, 1978.

(2) *Claims.* A claim for payment under this paragraph shall be executed by a State, or an agency or political subdivision of a State on a claim form prescribed by the Veterans Administration. Such claim must be received by the Veterans Administration within 2 years after the permanent burial or cremation of the body. Where the burial allowance was not payable at the death of the veteran because of the nature of the veteran's discharge from service, but after the veteran's death the veteran's discharge was corrected by competent authority so as to reflect a discharge under conditions other than dishonorable, claim may be filed within 2 years from the date of correction of the discharge.

(3) *Amount of the allowance.* A State or an agency or political subdivision of a State entitled to payment under this paragraph shall be paid the sum of $150 as a plot or interment allowance without regard to the acutal cost of the plot or interment.

(4) *Priority of payment.* A claim filed under this paragraph shall take precedence in payment of the plot or interment allowance over any claim filed for the plot or interment allowance under § 3.1601(a)(2). (38 U.S.C. 903(b).

[26 FR 1621, Feb. 24, 1961, as amended at 29 FR 9537, July 14, 1964; 38 FR 30107, Nov. 1, 1973; 44 FR 22722, Apr. 17, 1979; 44 FR 58710, Oct. 11, 1979]

§ 3.1605 Death while traveling under prior authorization or while hospitalized by the Veterans Administration.

An amount may be paid not to exceed the amount payable under § 3.1600 for the funeral, burial, plot, or interment expenses of a person who dies while in a hospital, domiciliary, or nursing home to which he or she was properly admitted under authority of the Veterans' Administration. In addition, the cost of transporting the body to the place of burial may be authorized. The amount payable under this section is subject to the limitations set forth in paragraph (b) of this section, and §§ 3.1604 and 3.1606.

(a) *Death enroute.* When a veteran while traveling under proper prior authorization and at Veterans' Administration expense to or from a specified place for the purpose of:

(1) Examination; or

(2) Treatment; or

(3) Care

dies enroute, burial, funeral, plot, interment, and transportation expenses will be allowed as though death occurred while properly hospitalized by the Veterans' Administration. Hospitalization in the Philippines under 38 U.S.C. 631, 632, and 633 does not meet the requirements of this section.

(b) *Transportation.* Except for retired persons hospitalized under section 5 of Executive Order 10122 (15 FR 2173; 3 CFR 1950 Supp.) issued pursuant to Public Law 351, 81st Congress, and not as Veterans' Administration beneficiaries, the cost of transportation of the body to the place of burial in addition to the burial and plot or interment allowance will be provided by the Veterans' Administration where death occurs:

(1) Within a State or the Canal Zone (38 U.S.C. 101 (20)) while the veteran is hospitalized by the Veterans' Administration and the body is buried in a State or the Canal Zone; or

(2) While hospitalized within but burial is to be outside of a State or the Canal Zone, except that cost of trans-

portation of the body will be authorized only from place of death to port of embarkation, or to border limits of United States where burial is in Canada or Mexico.

(c) *Extended entitlement.* Entitlement extends to the following persons who die while properly hospitalized by the Veterans Administration:

(1) Discharged or rejected draftees; or

(2) Members of the National Guard who reported to camp in answer to the President's call for World War I, World War II, or Korean service, but who when medically examined were not finally accepted for active military service; or

(3) A veteran discharged under conditions other than dishonorable from a period of service other than a war period.

(d) *Persons properly hospitalized.* A person properly hospitalized who dies:

(1) While on authorized absence which has not exceeded 96 hours at time of death;

(2) While in a status of unauthorized absence for a period not in excess of 24 hours; or

(3) While absent from the hospital for a period totaling 24 hours of combined authorized and unauthorized absence (all other cases in which such absence arises at the expiration of an authorized absence are not included);

is considered as having died while hospitalized.

(e) *Persons not properly hospitalized.* Where a deceased person was not properly hospitalized, benefits will not be authorized under this section.

[26 FR 1621, Feb. 24, 1961, as amended at 26 FR 7738, Aug. 18, 1961; 31 FR 5757, Apr. 14, 1966; 32 FR 3743, Mar. 4, 1967; 36 FR 22144, Nov. 20, 1971; 38 FR 30107, Nov. 1, 1973; 44 FR 22722, Apr. 17, 1979]

§ 3.1606 Transportation items.

The transportation costs of those persons who come within the provisions of §§ 3.1600(g) and 3.1605 (a), (b), (c), and (d) may include the following:

(a) *Shipment by common carrier.* (1) Charge for pickup of remains from place hospitalized or place of death but not to exceed the usual and customary charge made the general public for the same service.

(2) Procuring permit for shipment.

(3) *Shipping case.* When a box purchased for interment purposes is also used as the shipping case, the amount payable may not exceed the usual and customary charge for a shipping case. In any such instance any excess amount would be an acceptable item to be included in the burial allowance expenses.

(4) Cost of sealing outside case (tin or galvanized iron), if a vault (steel or concrete) is used as a shipping case and also for burial, an allowance of $30 may be made thereon in lieu of a separate shipping case.

(5) Cost of hearse to point where remains are to be placed on common carrier for shipment.

(6) Cost of transportation by common carrier including amounts paid as Federal taxes.

(7) Cost of one removal by hearse direct from common carrier plus one later removal by hearse to place of burial.

(b) *Transported by hearse.* (1) Charge for pickup of remains from place hospitalized, or place of death and

(2) Charge for one later removal by hearse to place of burial. These charges will not exceed those made the general public for the same services.

(3) Payment of hearse charges for transporting the remains over long distances are limited to prevailing common carrier rates when common carrier service is available and can be easily and effectively utilized.

[26 FR 1622, Feb. 24, 1961, as amended at 36 FR 22144, Nov. 20, 1971; 38 FR 27354, Oct. 3, 1973; 41 FR 55875, Dec. 23, 1976; 42 FR 26205, May 23, 1977]

§ 3.1607 Cost of flags.

No reimbursement will be authorized for the cost of a burial flag privately purchased by relatives, friends, or other parties but such cost may be included in a claim for the burial allowance.

[26 FR 1622, Feb. 24, 1961]

§ 3.1608 Nonallowable expenses.

No reimbursement will be allowed for:

(a) *Accessory items.* Such as items of food and drink.

(b) *Duplicate items.* Any item or cost of any item or service, such as casket, clothing, etc., previously provided or paid for by any Federal agency (including the Veterans Administration).

[26 FR 1622, Feb. 24, 1961]

§ 3.1609 Forfeiture.

(a) Forfeiture of benefits for fraud by a veteran during his lifetime will not preclude payment of burial and plot or interment allowance if otherwise in order. No benefits will be paid to a claimant who participated in the fraud which caused the forfeiture by the veteran.

(b) Burial and plot or interment allowance is not payable based on a period of service commencing prior to the date of commission of the offense where either the veteran or claimant has forfeited the right to gratuitous benefits under § 3.902 or § 3.903 by reason of a treasonable act or subversive activities, unless the offense was pardoned by the President of the United States prior to the date of the veteran's death (38 U.S.C. 3504(c)(2), 3505(a)).

[38 FR 30107, Nov. 1, 1973, as amended at 41 FR 55875, Dec. 27, 1976]

CROSS REFERENCE: Effect of forfeiture after veteran's death. See § 3.904.

§ 3.1610 Burial in National cemeteries.

The statutory burial allowance and permissible transportation charges as provided in §§ 3.1600 through 3.1611 are also payable where the burial of the deceased veteran is in a National cemetery when the following conditions have been met:

(a) Such burial is desired by the person or persons entitled to the custody of the remains for purposes of interment. Where the body is unclaimed by relatives or friends the Director of the regional office in the area in which the veteran died will immediately complete arrangements for burial in a national cemetery. (See § 3.1603.)

(b) Permission for burial has been received from the officers having jurisdiction over burials in National cemeteries.

[26 FR 1622, Feb. 24, 1961, as amended at 36 FR 22144, Nov. 20, 1971]

§ 3.1611 Official Veterans Administration representation at funeral.

When requested by the person entitled to the custody of the body of a deceased beneficiary of the Veterans Administration, official representation at the funeral will be granted provided an employee is available for the purpose and this representation will entail no expense to the Veterans Administration.

[26 FR 1622, Feb. 24, 1961]

§ 3.1612 Monetary allowance in lieu of a Government-furnished headstone or marker.

(a) *Purpose.* This section provides for the payment of a monetary allowance in lieu of furnishing a headstone or marker at Government expense under the provisions of § 1.631(a)(2) and (b) of this chapter to the person entitled to request such a headstone or marker.

(b) *Eligibility for the allowance.* All of the following conditions shall be met:

(1) The deceased veteran was eligible for burial in a national cemetery (See § 1.620 (a), (b), (c) and (d) of this chapter); or died under circumstances precluding the recovery or identification of the veteran's remains or the veteran's remains were buried at sea.

(2) The veteran was buried on or after October 18, 1978.

(3) The headstone or marker was purchased to mark the unmarked grave of the deceased veteran or to memorialize the deceased veteran or the veteran's identifying information was added to an existing headstone or marker.

(4) The headstone or marker is for placement in a cemetery other than a national cemetery or the headstone or marker upon which the veteran's identifying information was added is situated in a cemetery other than a national cemetery.

(c) *Person entitled to request a Government-furnished headstone or marker.* For purposes of this monetary allowance, a person entitled to request such a headstone or marker means the

person including, but not limited to, the executor, administrator or a person representing the deceased's estate, who purchased the headstone or marker, or who paid for adding the veteran's identifying information on an existing headstone or marker.

(d) *Receipted bill.* A receipted bill describing the headstone or marker (or the services rendered in adding the veteran's identifying information to an existing headstone or marker) date of purchase, purchase price, the amount of payment and the name of the person who made such payment, shall accompany a claim for this monetary allowance.

(e) *Payment and amount of the allowance.* (1) The monetary allowance is payable as reimbursement to the person entitled to request a Government-furnished headstone or marker. If funds of the decreased's estate were used to purchase the headstone or marker or to have the decreased's identifying information added to an existing headstone or marker, and no executor or administrator has been appointed, payment may be made to a person who will make distribution of this monetary allowance to the person or persons entitled under the laws governing the distribution of intestate estates in the State of the decedents' personal domicile.

(2) The amount of the allowance payable is the lesser of the following:

(i) Actual cost of acquiring a non-Government headstone or marker or the actual cost of adding the veteran's identifying information to an existing headstone or marker; or

(ii) The average actual cost, as determined by the Veterans Administration, of headstones and markers furnished at Government expense for the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased or the services for adding the veteran's identifying information on an existing headstone or marker were purchased. The average actual cost of headstones and markers furnished at Government expense for fiscal year 1979 (October 1, 1978 through September 30, 1979) is $53 and $59 for fiscal year 1980 (October 1, 1979 through September 30, 1980).

(3) The following applies to joint or multiple headstones or markers:

(i) When a joint or multiple non-Government headstone or marker is purchased subsequent to the veteran's death, the amount set forth in paragraph (e)(2)(ii) of this section shall be available as reimbursement for the cost of the veteran's portion of the joint or multiple headstone or marker.

(ii) When a joint or multiple non-Government headstone or marker is existent at the time of the veteran's death, the allowance payable as reimbursement under paragraph (e)(2) of this section shall be determined based on the cost of the services for adding the veteran's identifying information.

(f) *Payment of allowance prohibited.* This monetary allowance shall not be paid when a Government headstone or marker has been requested or issued under the provisions of § 1.631(a) (2) and (b) of this chapter.

(g) *Claims.* A claim for payment under this section must be received by the Veterans Administration within 2 years after the permanent burial or cremation of the deceased, or the date of purchase of the non-Government headstone or marker or the services for adding the veteran's identifying information on an existing headstone or marker, whichever date is later. (38 U.S.C. 906(d))

[44 FR 58711, Oct. 11, 1979, as amended at 46 FR 16101, Mar. 11, 1981]

PROVISIONAL REGULATIONS

§ 3.1690 Instructions relating to the effect of admission of the State of Alaska into the Union on payment of burial benefits.

(a) *Provisions of the law.* Section 29(a), Public Law 86-70, enacted June 25, 1959, amends section 903 of Title 38, United States Code, on the subject "Death in Veterans' Administration Facility", by revising subsection (b) to read as follows:

In addition to the foregoing, when such a death occurs in the continental United States (including Alaska), the Administrator shall transport the body to the place of burial in the continental United States (including Alaska) * * *

(b) *Scope.* When the death of a veteran occurs while traveling under prior authorization and at Veterans Administration expense to or from a specified place for the purpose of examination, treatment, or care, or while properly hospitalized by the Veterans Administration, or while receiving domiciliary care from the Veterans Administration, there may be paid in addition to the actual cost of funeral and burial (not to exceed $250) the cost of transporting the body to the place of burial within the continental limits of the United States which now include Alaska. The requirement that in such cases the Veterans Administration would pay for the cost of transporting the body to Alaska only if the veteran was a resident of Alaska has been removed by section 29(a) of Public Law 86-70 effective June 25, 1959. (Instruction 1, Pub. L. 86-70)

[26 FR 1622, Feb. 24, 1961]

§ 3.1691 Effect of admission of the State of Hawaii into the Union on payment of burial benefits.

(a) *Provisions of the law.* Section 25(b), Public Law 86-624, amends section 903 of Title 38, United States Code, on the subject "Death in Veterans' Administration facility", by revising subsection (b) to read as follows:

In addition to the foregoing, when such a death occurs in the continental United States or Hawaii, the Administrator shall transport the body to the place of burial in the continental United States or Hawaii. Where such a death occurs in a Territory, a Commonwealth, or a possession of the United States, the Administrator shall transport the body to the place of burial within such Territory, Commonwealth, or possession.

(b) *Effect of the act.* Section 903(b) of Title 38, United States Code, relates to the authority of the Veterans Administration to transport the bodies of veterans who had died in Veterans Administration facilities. Prior to enactment of Public Law 86-624 this section provided that when a death occurred in the continental United States (this included Alaska but excluded Hawaii) transportation of the body could be provided to the place of burial in the continental United States. There was no explicit provision included for transportation of the bodies of deceased veterans from Hawaii to the other States or from the other States to Hawaii. Public Law 86-624 removes the statutory distinctions between Hawaii and the other States and accords Hawaii the same treatment as the other States.

(c) *Adjudication procedure.* There may be paid in addition to the actual cost of funeral and burial (not to exceed $250) the cost of transporting the body to the place of burial within the continental limits of the United States or Hawaii if the death of a veteran occurs:

(1) While traveling under prior authorization and at Veterans Administration expense to or from a specified place for the purpose of examination, treatment, or care; or

(2) While properly hospitalized by the Veterans Administration; or

(3) While receiving domiciliary care from the Veterans Administration.

(d) *Effective date.* Section 25(b) of this law became effective on the date of enactment, July 12, 1960. Therefore, it applies where the veteran died on or after that date. (Instruction 1, 38 U.S.C. 903(b), Pub. L. 86-624.)

[26 FR 1622, Feb. 24, 1961]

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AUTHORITY: 72 Stat. 1125; 38 U.S.C. 355.

SOURCE: 29 FR 6718, May 22, 1964, unless otherwise noted.

Subpart A—General Policy in Rating

§ 4.1 Essentials of evaluative rating.

This rating schedule is primarily a guide in the evaluation of disability resulting from all types of diseases and injuries encountered as a result of or incident to military service. The percentage ratings represent as far as can practicably be determined the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions in civil occupations. Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability. For the application of this schedule, accurate and fully descriptive medical examinations are required, with emphasis upon the limitation of activity imposed by the disabling condition. Over a period of many years, a veteran's disability claim may require reratings in accordance with changes in laws, medical knowledge and his or her physical or mental condition. It is thus essential, both in the examination and in the evaluation of disability, that each disability be viewed in relation to its history.

[41 FR 11292, Mar. 18, 1976]

§ 4.2 Interpretation of examination reports.

Different examiners, at different times, will not describe the same disability in the same language. Features of the disability which must have persisted unchanged may be overlooked or a change for the better or worse may not be accurately appreciated or described. It is the responsibility of the rating specialist to interpret reports of examination in the light of the whole recorded history, reconciling the various reports into a consistent picture so that the current rating may accurately reflect the elements of disability present. Each disability must be considered from the point of view of the veteran working or seeking work. If a diagnosis is not supported by the findings on the examination report or if the report does not contain sufficient detail, it is incumbent upon the rating board to return the report as inadequate for evaluation purposes.

[41 FR 11292, Mar. 18, 1976]

§ 4.3 Resolution of reasonable doubt.

It is the defined and consistently applied policy of the Veterans Administration to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding the degree of disability such doubt will be resolved in favor of the claimant. See § 3.102 of this chapter.

[40 FR 42535, Sept. 15, 1975]

§ 4.6 Evaluation of evidence.

The element of the weight to be accorded the character of the veteran's service is but one factor entering into the considerations of the rating boards in arriving at determinations of the evaluation of disability. Every element in any way affecting the probative value to be assigned to the evidence in each individual claim must be thoroughly and conscientiously studied by each member of the rating board in the light of the established policies of the Veterans Administration to the end that decisions will be equitable and just as contemplated by the requirements of the law.

§ 4.7 Higher of two evaluations.

Where there is a question as to which of two evaluations shall be applied, the higher evaluation will be assigned if the disability picture more nearly approximates the criteria required for that rating. Otherwise, the lower rating will be assigned.

§ 4.9 Congenital or developmental defects.

Mere congenital or developmental defects, absent, displaced or supernumerary parts, refractive error of the eye, personality disorder and mental deficiency are not diseases or injuries in the meaning of applicable legislation for disability compensation purposes.

[41 FR 11292, Mar. 18, 1976]

§ 4.10 Functional impairment.

The basis of disability evaluations is the ability of the body as a whole, or of the psyche, or of a system or organ of the body to function under the ordinary conditions of daily life including employment. Whether the upper or lower extremities, the back or abdominal wall, the eyes or ears, or the cardiovascular, digestive, or other system, or psyche are affected, evaluations are based upon lack of usefulness, of these parts or systems, especially in self-support. This imposes upon the medical examiner the responsibility of furnishing, in addition to the etiological, anatomical, pathological, laboratory and prognostic data required for ordinary medical classification, full description of the effects of disability upon the person's ordinary activity. In this connection, it will be remembered that a person may be too disabled to engage in employment although he or she is up and about and fairly comfortable at home or upon limited activity.

[41 FR 11292, Mar. 18, 1976]

§ 4.13 Effect of change of diagnosis.

The repercussion upon a current rating of service connection when change is made of a previously assigned diagnosis or etiology must be kept in mind. The aim should be the reconciliation and continuance of the diagnosis or etiology upon which service connection for the disability had been granted. The relevant principle enunciated in § 4.128 entitled "Change of Diagnosis" should have careful attention in this connection. When any change in evaluation is to be made, the rating agency should assure itself that there has been an actual change in the conditions, for better or worse, and not merely a difference in thoroughness of the examination or in use of descriptive terms. This will not, of course, preclude the correction of erroneous ratings, nor will it preclude assignment of a rating in conformity with § 4.7.

§ 4.14 Avoidance of pyramiding.

The evaluation of the same disability under various diagnoses is to be avoided. Disability from injuries to the muscles, nerves, and joints of an extremity may overlap to a great extent, so that special rules are included in the appropriate bodily system for their evaluation. Dyspnea, tachycardia, nervousness, fatigability, etc., may result from many causes; some may be

service connected, others, not. Both the use of manifestations not resulting from service-connected disease or injury in establishing the service-connected evaluation, and the evaluation of the same manifestation under different diagnoses are to be avoided.

§ 4.15 Total disability ratings.

The ability to overcome the handicap of disability varies widely among individuals. The rating, however, is based primarily upon the average impairment in earning capacity, that is, upon the economic or industrial handicap which must be overcome and not from individual success in overcoming it. However, full consideration must be given to unusual physical or mental effects in individual cases, to peculiar effects of occupational activities, to defects in physical or mental endowment preventing the usual amount of success in overcoming the handicap of disability and to the effect of combinations of disability. Total disability will be considered to exist when there is present any impairment of mind or body which is sufficient to render it impossible for the average person to follow a substantially gainful occupation; *Provided*, That permanent total disability shall be taken to exist when the impairment is reasonably certain to continue throughout the life of the disabled person. The following will be considered to be permanent total disability: the permanent loss of the use of both hands, or of both feet, or of one hand and one foot, or of the sight of both eyes, or becoming permanently helpless or permanently bedridden. Other total disability ratings are scheduled in the various bodily systems of this schedule.

§ 4.16 Total disability ratings for compensation based on unemployability of the individual.

(a) Total disability ratings for compensation may be assigned, where the schedular rating is less than total, when the disabled person is, in the judgment of the rating agency, unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities: *Provided that*, if there is only one such disability, this disability shall be ratable at 60 percent or more, and that, if there are two or more disabilities, there shall be at least one disability ratable at 40 percent or more, and sufficient additional disability to bring the combined rating to 70 percent or more. For the above purpose of one 60 percent disability, or one 40 percent disability in combination, the following will be considered as one disability: (1) Disabilities of one or both upper extremities, or of one or both lower extremities, including the bilateral factor, if applicable, (2) disabilities resulting from common etiology or a single accident, (3) disabilities affecting a single body system, e.g. orthopedic, digestive, respiratory, cardiovascula-renal, neuropsychiatric, (4) multiple injuries incurred in action, or (5) multiple disabilities incurred as a prisoner of war. It is provided further that the existence or degree of non-service-connected disabilities or previous unemployability status will be disregarded where the percentages referred to in this paragraph for the service-connected disability or disabilities are met and in the judgment of the rating agency such service-connected disabilities render the veteran unemployable.

(b) It is the established policy of the Veterans Administration that all veterans who are unable to secure and follow a substantially gainful occupation by reason of service-connected disabilities shall be rated totally disabled. Therefore, rating boards should submit to the Director, Compensation and Pension Service for extra-schedular consideration all cases of veterans who are unemployable by reason of service-connected disabilities, but who fail to meet the percentage standards set forth in paragraph (a) of this section. The rating board will include a full statement as to the veteran's service-connected disabilities, employment history, educational and vocational attainment and all other factors having a bearing on the issue.

[40 FR 42535, Sept. 15, 1975]

§ 4.17 Total disability ratings for pension based on unemployability and age of the individual.

All veterans who are basically eligible and who are unable to secure and follow a substantially gainful occupation by reason of disabilities which are likely to be permanent shall be rated as permanently and totally disabled. For the purpose of pension, the permanence of the percentage requirements of § 4.16 is a requisite. The percentage requirements, however, are reduced on the attainment of age 55 to a 60 percent rating for one or more disabilities, with no percentage requirements for any one disability. The requirement at age 60 through 64 will be a 50 percent rating for one or more disabilities. A veteran who has become 65 years of age or older, or became unemployable after age 65, is conclusively presumed to be permanently and totally disabled by statute; hence, rating action for this purpose is unnecessary. When the reduced percentage requirements are met, and the disabilities involved are of a permanent nature, a rating of permanent and total disability will be assigned if the veteran is found to be unable to secure and follow substantially gainful employment by reason of such disability. Prior employment or unemployment status is immaterial if in the judgment of the rating board the veteran's disabilities render him or her unemployable. In making such determinations, the following guidelines will be used:

(a) Marginal employment, for example, as a self-employed farmer or other person, while employed in his or her own business, or at odd jobs or while employed at less than half the usual remuneration will not be considered incompatible with a determination of unemployability, if the restriction, as to securing or retaining better employment, is due to disability.

(b) Claims of all veterans who fail to meet the percentage standards but who meet the basic entitlement criteria and are unemployable, will be referred by the rating board to the Adjudication Officer under § 3.321(b)(2) of this chapter.

[43 FR 45348, Oct. 2, 1978]

§ 4.17a Misconduct etiology.

A permanent and total disability rating under the provisions of §§ 4.15, 4.16 and 4.17 will not be precluded by reason of the coexistence of misconduct disability when:

(a) A veteran, regardless of employment status, also has innocently acquired 100 percent disability, or

(b) Where unemployable, the veteran has other disabilities innocently acquired which meet the percentage requirements of §§ 4.16 and 4.17 and would render, in the judgment of the rating agency, the average person unable to secure or follow a substantially gainful occupation.

[40 FR 42536, Sept. 15, 1975, as amended at 43 FR 45349, Oct. 2, 1978]

§ 4.18 Unemployability.

A veteran may be considered as unemployable upon termination of employment which was provided on account of disability, or in which special consideration was given on account of the same, when it is satisfactorily shown that he or she is unable to secure further employment. With amputations, sequelae of fractures and other residuals of traumatism shown to be of static character, a showing of continuous unemployability from date of incurrence, or the date the condition reached the stabilized level, is a general requirement in order to establish the fact that present unemployability is the result of the disability. However, consideration is to be given to the circumstances of employment in individual claims, and, if the employment was only occasional, intermittent, tryout or unsuccessful, or eventually terminated on account of the disability, present unemployability may be attributed to the static disability. Where unemployability for pension previously has been established on the basis of combined service-connected and non-service-connected disabilities and the service-connected disability or disabilities have increased in severity, § 4.16 is for consideration.

[40 FR 42536, Sept. 15, 1975, as amended at 43 FR 45349, Oct. 2, 1978]

§ 4.19 Age in service-connected claims.

Age may not be considered as a factor in evaluating service-connected disability; and unemployability, in service-connected claims, associated with advancing age or intercurrent disability, may not be used as a basis for a total disability rating. Age, as such, is a factor only in evaluations of disability not resulting from service, i.e., for the purposes of pension.

[29 FR 6718, May 22, 1964, as amended at 43 FR 45349, Oct. 2, 1978]

§ 4.20 Analogous ratings.

When an unlisted condition is encountered it will be permissible to rate under a closely related disease or injury in which not only the functions affected, but the anatomical localization and symptomatology are closely analogous. Conjectural analogies will be avoided, as will the use of analogous ratings for conditions of doubtful diagnosis, or for those not fully supported by clinical and laboratory findings. Nor will ratings assigned to organic diseases and injuries be assigned by analogy to conditions of functional origin.

§ 4.21 Application of rating schedule.

In view of the number of atypical instances it is not expected, especially with the more fully described grades of disabilities, that all cases will show all the findings specified. Findings sufficiently characteristic to identify the disease and the disability therefrom, and above all, coordination of rating with impairment of function will, however, be expected in all instances.

[41 FR 11293, Mar. 18, 1976]

§ 4.22 Rating of disabilities aggravated by active service.

In cases involving aggravation by active service, the rating will reflect only the degree of disability over and above the degree existing at the time of entrance into the active service, whether the particular condition was noted at the time of entrance into the active service, or it is determined upon the evidence of record to have existed at that time. It is necessary therefore, in all cases of this character to deduct from the present degree of disability the degree, if ascertainable, of the disability existing at the time of entrance into active service, in terms of the rating schedule, except that if the disability is total (100 percent) no deduction will be made. The resulting difference will be recorded on the rating sheet. If the degree of disability at the time of entrance into the service is not ascertainable in terms of the schedule, no deduction will be made.

§ 4.23 Attitude of rating officers.

It is to be remembered that the majority of applicants are disabled persons who are seeking benefits of law to which they believe themselves entitled. In the exercise of his or her functions, rating officers must not allow their personal feelings to intrude; an antagonistic, critical, or even abusive attitude on the part of a claimant should not in any instance influence the officers in the handling of the case. Fairness and courtesy must at all times be shown to applicants by all employees whose duties bring them in contact, directly or indirectly, with the Administration's claimants.

[41 FR 11292, Mar. 18, 1976]

§ 4.24 Correspondence.

All correspondence relative to the interpretation of the schedule for rating disabilities, requests for advisory opinions, questions regarding lack of clarity or application to individual cases involving unusual difficulties, will be addressed to the Director, Compensation and Pension Service. A clear statement will be made of the point or points upon which information is desired, and the complete case file will be simultaneously forwarded to Central Office. Rating agencies will assure themselves that the recent report of physical examination presents an adequate picture of the claimant's condition. Claims in regard to which the schedule evaluations are considered inadequate or excessive, and errors in the schedule will be similarly brought to attention.

[41 FR 11292, Mar. 18, 1976]

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§ 4.25 Combined ratings table.

Table I, Combined Ratings Table, results from the consideration of the efficiency of the individual as affected first by the most disabling condition, then by the less disabling condition, then by other less disabling conditions, if any, in the order of severity. Thus, a person having a 60 percent disability is considered 40 percent efficient. Proceeding from this 40 percent efficiency, the effect of a further 30 percent disability is to leave only 70 percent of the efficiency remaining after consideration of the first disability, or 28 percent efficiency altogether. The individual is thus 72 percent disabled, as shown in table I opposite 60 percent and under 30 percent. To use table I, the disabilities will first be arranged in the exact order of their severity, beginning with the greatest disability and then combined with use of table I as hereinafter indicated. For example, if there are two disabilities, the degree of one disability will be read in the left column and the degree of the other in the top row, whichever is appropriate. The figures appearing in the space where the column and row intersect will represent the combined value of the two. This combined value will then be converted to the nearest number divisible by 10, and combined values ending in 5 will be adjusted upward. Thus, with a 50 percent disability and a 30 percent disability, the combined value will be found to be 65 percent, but the 65 percent must be converted to 70 percent to represent the final degree of disability. Similarly, with a disability of 40 percent, and another disability of 20 percent, the combined value is found to be 52 percent, but the 52 percent must be converted to the nearest degree divisible by 10, which is 50 percent. If there are more than two disabilities, the disabilities will also be arranged in the exact order of their severity and the combined value for the first two will be found as previously described for two disabilities. This combined value, exactly as found in table I will be combined with the degree of the third disability (in order of severity). The combined value for the three disabilities will be found in the space where the column and row intersect, and if there are only three disabilities will be converted to the nearest degree divisible by 10; adjusting final 5's upward. Thus, if there are three disabilities ratable at 60 percent, 40 percent, and 20 percent, respectively, the combined value for the first two will be found opposite 60 and under 40 and is 76 percent. This 76 will be combined with 20 and the combined value for the three is 81 percent. This combined value will be converted to the nearest degree divisible by 10 which is 80 percent. The same procedure will be employed when there are four or more disabilities. (See table I.)

TABLE I—COMBINED RATINGS TABLE

[10 combined with 10 is 19]

	10	20	30	40	50	60	70	80	90
19	27	35	43	51	60	68	76	84	92
20	28	36	44	52	60	68	76	84	92
21	29	37	45	53	61	68	76	84	92
22	30	38	45	53	61	69	77	84	92
23	31	38	46	54	62	69	77	85	92
24	32	39	47	54	62	70	77	85	92
25	33	40	48	55	63	70	78	85	93
26	33	41	48	56	63	70	78	85	93
27	34	42	49	56	64	71	78	85	93
28	35	42	50	57	64	71	78	86	93
29	36	43	50	57	65	72	79	86	93
30	37	44	51	58	65	72	79	86	93
31	38	45	52	59	66	72	79	86	93
32	39	46	52	59	66	73	80	86	93
33	40	46	53	60	67	73	80	87	93
34	41	47	54	60	67	74	80	87	93
35	42	48	55	61	68	74	81	87	94
36	42	49	55	62	68	74	81	87	94
37	43	50	56	62	69	75	81	87	94

TABLE I—COMBINED RATINGS TABLE—Continued

[10 combined with 10 is 19]

	10	20	30	40	50	60	70	80	90
38	44	50	57	63	69	75	81	88	94
39	45	51	57	63	70	76	82	88	94
40	46	52	58	64	70	76	82	88	94
41	47	53	59	65	71	76	82	88	94
42	48	54	59	65	71	77	83	88	94
43	49	54	60	66	72	77	83	89	94
44	50	55	61	66	72	78	83	89	94
45	51	56	62	67	73	78	84	89	95
46	51	57	62	68	73	78	84	89	95
47	52	58	63	68	74	79	84	89	95
48	53	58	64	69	74	79	84	90	95
49	54	59	64	69	75	80	85	90	95
50	55	60	65	70	75	80	85	90	95
51	56	61	66	71	76	80	85	90	95
52	57	62	66	71	76	81	86	90	95
53	58	62	67	72	77	81	86	91	95
54	59	63	68	72	77	82	86	91	95
55	60	64	69	73	78	82	87	91	96
56	60	65	69	74	78	82	87	91	96
57	61	66	70	74	79	83	87	91	96
58	62	66	71	75	79	83	87	92	96
59	63	67	71	75	80	84	88	92	96
60	64	68	72	76	80	84	88	92	96
61	65	69	73	77	81	84	88	92	96
62	66	70	73	77	81	85	89	92	96
63	67	70	74	78	82	85	89	93	96
64	68	71	75	78	82	86	89	93	96
65	69	72	76	79	83	86	90	93	97
66	69	73	76	80	83	86	90	93	97
67	70	74	77	80	84	87	90	93	97
68	71	74	78	81	84	87	90	94	97
69	72	75	78	81	85	88	91	94	97
70	73	76	79	82	85	88	91	94	97
71	74	77	80	83	86	88	91	94	97
72	75	78	80	83	86	89	92	94	97
73	76	78	81	84	87	89	92	95	97
74	77	79	82	84	87	90	92	95	97
75	78	80	83	85	88	90	93	95	98
76	78	81	83	86	88	90	93	95	98
77	79	82	84	86	89	91	93	95	98
78	80	82	85	87	89	91	93	96	98
79	81	83	85	87	90	92	94	96	98
80	82	84	86	88	90	92	94	96	98
81	83	85	87	89	91	92	94	96	98
82	84	86	87	89	91	93	95	96	98
83	85	86	88	90	92	93	95	97	98
84	86	87	89	90	92	94	95	97	98
85	87	88	90	91	93	94	96	97	99
86	87	89	90	92	93	94	96	97	99
87	88	90	91	92	94	95	96	97	99
88	89	90	92	93	94	95	96	98	99
89	90	91	92	93	95	96	97	98	99
90	91	92	93	94	95	96	97	98	99
91	92	93	94	95	96	96	97	98	99
92	93	94	94	95	96	97	98	98	99
93	94	94	95	96	97	97	98	99	99
94	95	95	96	96	97	98	98	99	99

[41 FR 11293, Mar. 18, 1976]

§ 4.26 Bilateral factor.

When a partial disability results from disease or injury of both arms, or of both legs, or of paired skeletal muscles, the ratings for the disabilities of the right and left sides will be combined as usual, and 10 percent of this value will be added (i.e., not combined) before proceeding with further combinations, or converting to degree of dis-

ability. The bilateral factor will be applied to such bilateral disabilities before other combinations are carried out and the rating for such disabilities including the bilateral factor in this section will be treated as 1 disability for the purpose of arranging in order of severity and for all further combinations. For example, with disabilities evaluated at 60 percent, 20 percent, 10 percent and 10 percent (the two 10's representing bilateral disabilities), the order of severity would be 60, 21 and 20. The 60 and 21 combine to 68 percent and the 68 and 20 to 74 percent, converted to 70 percent as the final degree of disability.

(a) The use of the terms "arms" and "legs" is not intended to distinguish between the arm, forearm and hand, or the thigh, leg, and foot, but relates to the upper extremities and lower extremities as a whole. Thus with a compensable disability of the right thigh, for example, amputation, and one of the left foot, for example, pes planus, the bilateral factor applies, and similarly whenever there are compensable disabilities affecting use of paired extremities regardless of location or specified type of impairment.

(b) The correct procedure when applying the bilateral factor to disabilities affecting both upper extremities and both lower extremities is to combine the ratings of the disabilities affecting the 4 extremities in the order of their individual severity and apply the bilateral factor by adding, not combining, 10 percent of the combined value thus attained.

(c) The bilateral factor is not applicable unless there is partial disability of compensable degree in each of 2 paired extremities, or paired skeletal muscles.

§ 4.27 Use of diagnostic code numbers.

The diagnostic code numbers appearing opposite the listed ratable disabilities are arbitrary numbers for the purpose of showing the basis of the evaluation assigned and for statistical analysis in the Veterans Administration, and as will be observed, extend from 5000 to a possible 9999. Great care will be exercised in the selection of the applicable code number and in its citation on the rating sheet. No other numbers than these listed or hereafter furnished are to be employed for rating purposes, with an exception as described in this section, as to unlisted conditions. When an unlisted disease, injury, or residual condition is encountered, requiring rating by analogy, the diagnostic code number will be "built-up" as follows: The first 2 digits will be selected from that part of the schedule most closely identifying the part, or system, of the body involved; the last 2 digits will be "99" for all unlisted conditions. This procedure will facilitate a close check of new and unlisted conditions, rated by analogy. In the selection of code numbers, injuries will generally be represented by the number assigned to the residual condition on the basis of which the rating is determined. With diseases, preference is to be given to the number assigned to the disease itself; if the rating is determined on the basis of residual conditions, the number appropriate to the residual condition will be added, preceded by a hyphen. Thus, rheumatoid (atrophic) arthritis rated as ankylosis of the lumbar spine should be coded "5002-5289." In this way, the exact source of each rating can be easily identified. In the citation of disabilities on rating sheets, the diagnostic terminology will be that of the medical examiner, with no attempt to translate the terms into schedule nomenclature. Residuals of diseases or therapeutic procedures will not be cited without reference to the basic disease.

[41 FR 11293, Mar. 18, 1976]

§ 4.28 Prestabilization rating from date of discharge from service.

The following ratings may be assigned, in lieu of ratings prescribed elsewhere, under the conditions stated for disability from any disease or injury. The prestabilization rating is not to be assigned in any case in which a total rating is immediately assignable under the regular provisions of the schedule or on the basis of individual unemployability. The prestabilization 50-percent rating is not to be used in any case in which a rating of 50 percent or more is immediately assignable under the regular provisions.

	Rating
Unstabilized condition with severe disability—	
Substantially gainful employment is not feasible or advisable	100
Unhealed or incompletely healed wounds or injuries—	
Material impairment of employability likely	50

NOTE (1). Veterans Administration examination is not required prior to assignment of prestabilization ratings; however, the fact that examination was accomplished will not preclude assignment of these benefits. Prestabilization ratings are for assignment in the immediate postdischarge period. They will continue for a 12-month period following discharge from service. However, prestabilization ratings may be changed to a regular schedular total rating or one authorizing a greater benefit at any time. In each prestabilization rating an examination will be requested to be accomplished not earlier than 6 months nor more than 12 months following discharge. In those prestabilization ratings in which following examination reduction in evaluation is found to be warranted, the higher evaluation will be continued to the end of the 12th month following discharge or to the end of the period provided under § 3.105(e) of this chapter, whichever is later. Special monthly compensation should be assigned concurrently in these cases whenever records are adequate to establish entitlement.

NOTE (2). Diagnosis of disease, injury, or residuals will be cited, with diagnostic code number assigned from this rating schedule for conditions listed therein.

[35 FR 11906, July 24, 1970]

§ 4.29 Ratings for service-connected disabilities requiring hospital treatment or observation.

A total disability rating (100 percent) will be assigned without regard to the provisions of the rating schedule when it is established that a service-connected disability has required hospital treatment in a Veterans Administration or an approved hospital for a period in excess of 21 days or hospital observation at Veterans Administration expense for a service-connected disability for a period in excess of 21 days.

(a) Subject to the provisions of paragraphs (d), (e), and (f) of this section, this increased rating will be effective the first day of continuous hospitalization and will be terminated effective the last day of the month of hospital discharge (regular discharge or release to non-bed care) or effective the last day of the month of termination of treatment or observation for the service-connected disability or effective the last day of the month following release to non-bed care. A third consecutive authorized absence of 14 days will be regarded as the equivalent of hospital discharge and will interrupt hospitalization effective on the last day of the month in which the third 14 day period begins, except where there is a finding that convalescence is required as provided by paragraph (e) or (f) of this section. The termination of these total ratings will not be subject to § 3.105(e) of this chapter.

(b) Notwithstanding that hospital admission was for disability not connected with service, if during such hospitalization, hospital treatment for a service-connected disability is instituted and continued for a period in excess of 21 days, the increase to a total rating will be granted from the first day of such treatment. If service connection for the disability under treatment is granted after hospital admission, the rating will be from the first day of hospitalization if otherwise in order.

(c) The assignment of a total disability rating on the basis of hospital treatment or observation will not preclude the assignment of a total disability rating otherwise in order under the rating schedule, and consideration will be given the propriety of such a rating in all instances and to propriety of its continuance after discharge. Particular attention, with a view to proper rating under the rating schedule, is to be given to the claims of veterans discharged from hospital, regardless of length of hospitalization, with indications on the final summary of expected confinement to bed or house, or to inability to work with requirement of frequent care of physician or nurse at home.

(d) On these total ratings Veterans Administration regulations governing effective dates for increased benefits will control.

(e) The total hospital rating if convalescence is required may be continued for periods of 1, 2, or 3 months in addition to the period provided in paragraph (a) of this section.

(f) Extension of periods of 1, 2 or 3 months beyond the initial 3 months may be made upon approval of the Adjudication Officer.

(g) Meritorious claims of veterans who are discharged from the hospital with less than the required number of days but need post-hospital care and a prolonged period of convalescence will be referred to the Director, Compensation and Pension Service, under § 3.321(b) of this chapter.

[29 FR 6718, May 22, 1964, as amended at 41 FR 11294, Mar. 18, 1976; 41 FR 34256, Aug. 13, 1976]

§ 4.30 Convalescent ratings.

(a) Subject to Veterans Administration regulations governing effective dates for increased benefits, where the report at hospital discharge indicates entitlement under paragraph (a) (1), (2) or (3) of this section, a total rating (100 percent) will be granted following hospital discharge (regular discharge or release to non-bed care), effective from the date of hospital admission and continuing for a period of 1, 2, or 3 months from the first day of the month following such hospital discharge. These total ratings will be granted if the hospital treatment of the service-connected disability resulted in:

(1) Surgery necessitating posthospital convalescence. The initial grant of a total rating will be limited to 1 month, with one or two extensions of periods of 1 month each in exceptional cases.

(2) Surgery with severe postoperative residuals shown at hospital discharge, such as incompletely healed surgical wounds, stumps of recent amputations, therapeutic immobilization of one major joint or more, application of a body cast, or the necessity for house confinement, or the necessity for continued use of a wheelchair or crutches (regular weight-bearing prohibited). Initial grants may be for 1, 2, or 3 months.

(3) Immobilization by cast, without surgery, of one major joint or move shown at hospital discharge or performed on an outpatient basis. Initial grants may be for 1, 2, or 3 months. A reduction in the total rating will not be subject to § 3.105(e) of this chapter. The total rating will be followed by an open rating reflecting the appropriate schedular evaluation; where the evidence is inadequate to assign the schedular evaluation, a physcial examination will be scheduled prior to the end of the total rating period.

(b) A total rating under this section will require full justification on the rating sheet and may be extended as follows:

(1) Extensions of 1, 2 or 3 months beyond the initial 3 months may be made under paragraph (a) (1), (2) or (3) of this section.

(2) Extensions of 1 or more months up to 6 months beyond the initial 6 months period may be made under paragraph (a) (2) or (3) of this section upon approval of the Adjudication Officer.

[41 FR 34256, Aug. 13, 1976]

§ 4.31 A no-percent rating.

In every instance where the minimum schedular evaluation requires residuals and the schedule does not provide a no-percent evaluation, a no-percent evaluation will be assigned when the required residuals are not shown.

Subpart B—Disability Ratings

The Musculoskeletal System

§ 4.40 Functional loss.

Disability of the musculoskeletal system is primarily the inability, due to damage or infection in parts of the system, to perform the normal working movements of the body with normal excursion, strength, speed, coordination and endurance. It is essential that the examination on which ratings are based adequately portray the anatomical damage, and the functional loss, with respect to all these elements. The functional loss may be due to absence of part, or all, of the necessary bones, joints and muscles, or associated structures, or to deformity, adhesions, defective innervation, or other pathology, or it may be due to pain, supported by adequate pathology and evidenced by the visible behavior of the claimant undertaking

the motion. Weakness is as important as limitation of motion, and a part which becomes painful on use must be regarded as seriously disabled. A little used part of the musculoskeletal system may be expected to show evidence of disuse, either through atrophy, the condition of the skin, absence of normal callosity or the like.

§ 4.41 History of injury.

In considering the residuals of injury, it is essential to trace the medical-industrial history of the disabled person from the original injury, considering the nature of the injury and the attendant circumstances, and the requirements for, and the effect of, treatment over past periods, and the course of the recovery to date. The duration of the initial, and any subsequent, period of total incapacity, especially periods reflecting delayed union, inflammation, swelling, drainage, or operative intervention, should be given close attention. This consideration, or the absence of clear cut evidence of injury, may result in classifying the disability as not of traumatic origin, either reflecting congenital or developmental etiology, or the effects of healed disease.

§ 4.42 Complete medical examination of injury cases.

The importance of complete medical examination of injury cases at the time of first medical examination by the Veterans Administration cannot be overemphasized. When possible, this should include complete neurological and psychiatric examination, and other special examinations indicated by the physical condition, in addition to the required general and orthopedic or surgical examinations. When complete examinations are not conducted covering all systems of the body affected by disease or injury, it is impossible to visualize the nature and extent of the service connected disability. Incomplete examination is a common cause of incorrect diagnosis, especially in the neurological and psychiatric fields, and frequently leaves the Veterans Administration in doubt as to the presence or absence of disabling conditions at the time of the examination.

§ 4.43 Osteomyelitis.

Chronic, or recurring, suppurative osteomyelitis, once clinically identified, including chronic inflammation of bone marrow, cortex, or periosteum, should be considered as a continuously disabling process, whether or not an actively discharging sinus or other obvious evidence of infection is manifest from time to time, and unless the focus is entirely removed by amputation will entitle to a permanent rating to be combined with other ratings for residual conditions, however, not exceeding amputation ratings at the site of election.

§ 4.44 The bones.

The osseous abnormalities incident to trauma or disease, such as malunion with deformity throwing abnormal stress upon, and causing malalignment of joint surfaces, should be depicted from study and observation of all available data, beginning with inception of injury or disease, its nature, degree of prostration, treatment and duration of convalescence, and progress of recovery with development of permanent residuals. With shortening of a long bone, some degree of angulation is to be expected; the extent and direction should be brought out by X-ray and observation. The direction of angulation and extent of deformity should be carefully related to strain on the neighboring joints, especially those connected with weight-bearing.

§ 4.45 The joints.

As regards the joints the factors of disability reside in reductions of their normal excursion of movements in different plants. Inquiry will be directed to these considerations:

(a) Less movement than normal (due to ankylosis, limitation or blocking, adhesions, tendon-tie-up, contracted scars, etc.).

(b) More movement than normal (from flail joint, resections, nonunion of fracture, relaxation of ligaments, etc.).

(c) Weakened movement (due to muscle injury, disease or injury of peripheral nerves, divided or lengthened tendons, etc.).

(d) Excess fatigability.

(e) Incoordination, impaired ability to execute skilled movements smoothly.

(f) Pain on movement, swelling, deformity or atrophy of disuse. Instability of station, disturbance of locomotion, interference with sitting, standing and weight-bearing are related considerations. For the purpose of rating disability from arthritis, the shoulder, elbow, wrist, hip, knee, and ankle are considered major joints; multiple involvements of the interphalangeal, metacarpal and carpal joints of the upper extremities, the interphalangeal, metatarsal and tarsal joints of the lower extremities, the cervical vertebrae, the dorsal vertebrae, and the lumbar vertebrae, are considered groups of minor joints, ratable on a parity with major joints. The lumbosacral articulation and both sacroiliac joints are considered to be a group of minor joints, ratable on disturbance of lumbar spine functions.

§ 4.46 Accurate measurement.

Accurate measurement of the length of stumps, excursion of joints, dimensions and location of scars with respect to landmarks, should be insisted on. The use of a goniometer in the measurement of limitation of motion is indispensable in examinations conducted within the Veterans Administration. Muscle atrophy must also be accurately measured and reported.

[41 FR 11294, Mar. 18, 1976]

§ 4.47 Effect of missiles.

Through and through wounds and other wounds of the deeper structures almost invariably destroy parts of muscle groups and bring about intermuscular fusion and binding by cicatricial tissue and adherence of muscle sheath. Thus, the muscles no longer work smoothly but pull against fascial planes and other muscles with which they are fused, so that delicate, coordinated movements are interfered with and there is loss of strength. After prolonged exertion the stresses and strains due to these disarrangements bring about fatigue and pain, thus further interfering with the function of the part.

§ 4.48 Scars.

As to the residuals of wounds not chiefly characterized by amputation, ankylosis, or limitation of motion, the most obvious feature of the disability and the starting point for physical examination is the superficial scar. An accurate and full description of the scar must be furnished by the medical examiner, so that the disability from it may be intelligently visualized and evaluated. Its location, length, width and depth will be described; whether it is painful, inflamed or keloid; adherent or nonadherent; whether it involves or distorts neighboring orifices; whether it is exerting traction or limiting normal motion of the parts involved; whether there is ankylosis of contiguous joints; whether there is bone or muscle loss, or muscle hernia, and, if so, to what extent and how productive of interference with normal functions; whether there is associated lesion of a peripheral nerve (the nature and effects to be depicted by a neurologist, wherever possible).

§ 4.49 Deeper structures.

A description of the residuals of such a wound in terms of one or more superficial scars does not, however, evidence the application of medical knowledge and observation to the extent required. The whole track of the missile should be envisaged in its passage through skin, muscle, and fascial planes, and also any bone or nerve involvements either evidenced as disability or as inevitably resulting from the course of the missile. The military records made at the time of the original injury should be consulted and considered in evaluating the final picture. Particular attention should be given to tracing the complaints of claimants to their physical basis.

§ 4.50 Muscle injuries.

Disability from injuries of muscles presents a special problem. Shrapnel and shell fragments and high velocity bullets may inflict massive damage upon muscles with permanent residuals. The principal symptoms of disability from such muscle injuries are weakness, undue fatigue-pain, and uncertainty or incoordination of move-

ment. The physical factors are intermuscular fusing and binding, and welding together of fascial planes and aponeurotic sheaths. In those scar-bound muscles strength is impaired, the threshold of fatigue is lowered and delicate coordination is interfered with. Skin scars are incidental and negligible. It is the deep intramuscular and intermuscular scarring that is disabling. When a joint is ankylosed the muscles acting on that joint take no rating; for example, intrinsic shoulder girdle muscles when the shoulder joint is ankylosed. On the other hand, injured extrinsic shoulder girdle muscles take a rating to be combined with ankylosis of the shoulder joint because their damage impairs the compensatory scapular movements which then have increased importance. In ankylosis of the knee, the muscles of the hamstring group, if injured, take a rating for their action as hip extensors, but one step lower than the estimated degree.

§ 4.51 Muscle weakness.

The conception of disability of a muscle or muscle group is based on the ability of the muscle to perform its full work and not solely on its ability to move a joint. A muscle which can barely move its bony lever but which has no substantial excess of power or endurance to enable it to perform work by that movement is in effect a useless muscle for occupational efficiency. Tests for ability to move adjacent joints are useless for estimation of the disability in cases of muscle injuries unless all the movements are required to be made against varying resistance (for example, with gravity, against gravity, against moderate resistance, against strong resistance) and compared with the sound side. Comparative tests of endurance and of coordination are also needed. Muscle injuries alone do not necessarily limit the movements of adjacent joints and these movements may be freely carried out by very weak muscles, or even by gravity alone without muscular participation as in extension of the elbow and in dropping the arm to the side.

§ 4.52 Muscle damage.

When an operative dissection is made in the area of old gunshot muscle wounds, as for nerve suture, removal of foreign body, excision of ragged scar, etc., the surgeon finds that the anatomical structures are so distorted that it is difficult or impossible to recognize the familiar muscle landmarks. There is intermuscular fusing and binding and obliteration of fascial planes. So-called penniform muscles have a type of structure which permits the maximum cross section of muscle tissues for the space occupied. Most muscles of the extremities are of this type and these muscles often have their parallel aponeurotic sheaths welded together by scar tissue wherever the slanting muscle fibers which normally connect them have been destroyed. The muscle fasciculi are found displaced in direction and their interspaces infiltrated with scar tissue. It is obvious that when these crippled and scar-bound muscles are called on to act with other muscles in a movement they can no longer work smoothly, pulling evenly on their normal insertions, but pull in part against fascial planes and other muscles with which they are fused, so that a part of their force is misdirected. Both strength and endurance must necessarily be impaired, the threshold of fatigue lowered and delicate coordinate movements interfered with. These changes are the real factors in all disabilities residual to healed muscle wounds.

§ 4.53 Muscle patterns.

Every movement calls into action the muscles necessary for that movement constituting a definite muscle pattern which is invariable for that movement. None of the muscles can be left out of action in performing the movement nor can any other muscle be called into play to execute the movement. Every movement requires full efficiency, the full complement of muscles included in its specific pattern. If one, or more, of the group is injured or destroyed the efficiency of the movement is permanently impaired. It is the distortion of the intricate mechanism of muscle structures,

the intermuscular binding, the obliteration of fascial planes and welding of aponeurotic sheaths that results in permanent residual disabilities. The typical symptoms associated with severe muscle injuries are: Fatigue rapidly coming on after moderate use of the affected muscle groups; pain occurring shortly after the incidence of fatigue sensations, the type of pain being that which is characteristic of and normally associated with prolonged severe muscular effort (fatigue-pain); inability to make certain movements with the same degree of strength as before injury; uncertainty in making certain movements, particularly when made quickly. When the subjective evidence in an individual claim appears as the natural result of a pathological condition shown objectively, and particularly when consistent from time of first examination, i.e., when obviously not based upon information given to the claimant by previous examiners or relayed to him or her from the claims file, it will be given due weight.

[43 FR 45349, Oct. 2, 1978]

§ 4.54 Muscle groups.

Disabilities due to residuals of muscle injuries will be evaluated on the basis laid down in §§ 4.55 and 4.56 and on the type of disability pictures appended to the ratings listed. In the following schemes the skeletal muscles of the body are divided for rating purposes into 23 groups, in 8 anatomical regions: 4 groups for the shoulder girdle, 2 for the arm, 3 for the forearm and hand, 3 for the foot and leg, 3 for the thigh, 3 for the pelvic girdle, 3 for the trunk, and 2 for the neck. The facial muscles will be rated in accordance with interference with the functions supplied by the cranial nerves. Four grades of severity of disabilities due to muscle injuries are here recognized for rating purposes: slight, moderate, moderately severe and severe. The type of disability pictures for these, as set forth in §§ 4.55 and 4.56, will be a basis for assigning ratings for each of the 23 muscle groups. The type of disability pictures are based on the cardinal symptoms of muscle disability (weakness, fatigue-pain, uncertainty of movement) and on the objective evidence of muscle damage and the cardinal signs of muscle disability (loss of power, lowered threshold of fatigue and impairment of coordination).

[29 FR 6718, May 22, 1964, as amended at 43 FR 45349, Oct. 2, 1978]

§ 4.55 Principles of combined ratings.

The following principles as to combination of ratings of muscle injuries in the same anatomical segment, or of muscle injuries affecting the movements of a single joint, either alone or in combination or limitation of the arc of motion will govern the ratings:

(a) Muscle injuries in the same anatomical region, i.e., (1) shoulder girdle and arm, (2) forearm and hand, (3) pelvic girdle and thigh, (4) leg and foot, will not be combined, but instead, the rating for the major group ill be elevated from moderate to moderately severe, or from moderately severe to severe, according to the severity of the aggregate impairment of function of the extremity.

(b) Two or more severe muscle injuries affecting the motion (particularly strength of motion) about a single joint may be combined but not in combination receive more than the rating for ankylosis of that joint at an "intermediate" angle, except that with severe injuries involving the shoulder girdle and arm, the combination may not exceed the rating for unfavorable ankylosis of the scapulohumeral joint. Claims of an unusually severe degree of disability involving the shoulder girdle and arm or the pelvic girdle and thigh muscles wherein the evaluation under the criteria in this section appears inadequate may be submitted to the Director, Compensation and Pension Service for consideration under § 3.321(b)(1) of this chapter.

(c) With definite limitation of the arc of motion, the rating for injuries to muscles affecting motion within the remaining arc may be combined but not to exceed ankylosis at an "intermediate" angle.

(d) With ankylosis of the shoulder, the intrinsic muscles of the shoulder girdle (Groups III or IV) are out of commission and carry no rating for injury however severe. The extrinsic

muscles (Groups I and II) which act on the shoulder as a whole, may, if severely injured, elevate the rating to ankylosis at an unfavorable angle.

(e) With ankylosis of the knee, the hamstring muscles (Group XIII) may, if severely injured, receive the rating for the moderately severe degree of disability as a maximum in combination, and corresponding values for less severe injuries, the major function of these muscles being hip extension.

(f) With disability such as flail joint, ankylosis, faulty union, limitation of motion, etc., muscle injuries affecting function at a lower level may be separately rated and combined, always reserving the maximum amputation rating for the most severe injuries.

(g) Muscle injury ratings will not be combined with peripheral nerve paralysis ratings for the same part, unless affecting entirely different functions.

[29 FR 6718, May 22, 1964, as amended at 43 FR 45349, Oct. 2, 1978]

§ 4.56 Factors to be considered in the evaluation of disabilities residual to healed wounds involving muscle groups due to gunshot or other trauma.

(a) *Slight (insignificant) disability of muscles.*

Type of injury. Simple wound of muscle without debridement, infection or effects of laceration.

History and complaint. Service department record of wound of slight severity or relatively brief treatment and return to duty. Healing with good functional results. No consistent complaint of cardinal symptoms of muscle injury or painful residuals.

Objective findings. Minimum scar; slight, if any, evidence of fascial defect or of atrophy or of impaired tonus. No significant impairment of function and no retained metallic fragments.

(b) *Moderate disability of muscles.*

Type of injury. Through and through or deep penetrating wounds of relatively short track by single bullet or small shell or shrapnel fragment are to be considered as of at least moderate degree. Absence of explosive effect of high velocity missile and of residuals of debridement or of prolonged infection.

History and complaint. Service department record or other sufficient evidence of hospitalization in service for treatment of wound. Record in the file of consistent complaint on record from first examination forward, of one or more of the cardinal symptoms of muscle wounds particularly fatigue and fatigue-pain after moderate use, affecting the particular functions controlled by injured muscles.

Objective findings. Entrance and (if present) exit scars linear or relatively small and so situated as to indicate relatively short track of missile through muscle tissue; signs of moderate loss of deep fascia or muscle substance or impairment of muscle tonus, and of definite weakness or fatigue in comparative tests. (In such tests the rule that with strong efforts, antagonistic muscles relax is to be applied to insure validity of tests.)

(c) *Moderately severe disability of muscles.*

Type of injury. Through and through or deep penetrating wound by high velocity missile of small size or large missile of low velocity, with debridement or with prolonged infection or with sloughing of soft parts, intermuscular cicatrization.

History and complaint. Service department record or other sufficient evidence showing hospitalization for a prolonged period in service for treatment of wound of severe grade. Record in the file of consistent complaint of cardinal symptoms of muscle wounds. Evidence of unemployability because of inability to keep up with work requirements is to be considered, if present.

Objective findings. Entrance and (if present) exit scars relatively large and so situated as to indicate track of missile through important muscle groups. Indications on palpation of moderate loss of deep fascia, or moderate loss of muscle substance or moderate loss of normal firm resistance of muscles compared with sound side. Tests of strength and endurance of muscle groups involved (compared with sound side) give positive evidence of marked or moderately severe loss.

(d) *Severe disability of muscles.*

Type of injury. Through and through or deep penetrating wound due to high velocity missile, or large or multiple low velocity missiles, or explosive effect of high velocity missile, or shattering bone fracture with extensive debridement or prolonged infection and sloughing of soft parts, intermuscular binding and cicatrization.

History and complaint. As under moderately severe (paragraph (c) of this section), in aggravated form.

Objective findings. Extensive ragged, depressed, and adherent scars of skin so situated as to indicate wide damage to muscle groups in track of missile. X-ray may show minute multiple scattered foreign bodies indicating spread of intermuscular trauma

and explosive effect of missile. Palpation shows moderate or extensive loss of deep fascia or of muscle substance. Soft or flabby muscles in wound area. Muscles do not swell and harden normally in contraction. Tests of strength or endurance compared with the sound side or of coordinated movements show positive evidence of severe impairment of function. In electrical tests, reaction of degeneration is not present but a diminished excitability to faradic current compared with the sound side may be present. Visible or measured atrophy may or may not be present. Adaptive contraction of opposing group of muscles, if present, indicates severity. Adhesion of scar to one of the long bones, scapula, pelvic bones, sacrum or vertebrae, with epithelial sealing over the bone without true skin covering, in an area where bone is normally protected by muscle, indicates the severe type. Atrophy of muscle groups not included in the track of the missile, particularly of the trapezius and serratus in wounds in the shoulder girdle (traumatic muscular dystrophy), and induration and atrophy of an entire muscle following simple piercing by a projectile (progressive sclerosing myositis), may be included in the severe group if there is sufficient evidence of severe disability.

[29 FR 6718, May 22, 1964, as amended at 43 FR 45349, Oct. 2, 1978]

§ 4.57 Static foot deformities.

It is essential to make an initial distinction between bilateral flatfoot as a congenital or as an acquired condition. The congenital condition, with depression of the arch, but no evidence of abnormal callosities, areas of pressure, strain or demonstrable tenderness, is a congenital abnormality which is not compensable or pensionable. In the acquired condition, it is to be remembered that depression of the longitudinal arch, or the degree of depression, is not the essential feature. The attention should be given to anatomical changes, as compared to normal, in the relationship of the foot and leg, particularly to the inward rotation of the superior portion of the os calcis, medial deviation of the insertion of the Achilles tendon, the medial tilting of the upper border of the astragalus. This is an unfavorable mechanical relationship of the parts. A plumb line dropped from the middle of the patella falls inside of the normal point. The forepart of the foot is abducted, and the foot everted. The plantar surface of the foot is painful and shows demonstrable tenderness, and manipulation of the foot produces spasm of the Achilles tendon, peroneal spasm due to adhesion about the peroneal sheaths, and other evidence of pain and limited motion. The symptoms should be apparent without regard to exercise. In severe cases there is gaping of bones on the inner border of the foot, and rigid valgus position with loss of the power of inversion and adduction. Exercise with undeveloped or unbalanced musculature, producing chronic irritation, can be an aggravating factor. In the absence of trauma or other definite evidence of aggravation, service connection is not in order for pes cavus which is a typically congenital or juvenile disease.

§ 4.58 Arthritis due to strain.

With service incurred lower extremity amputation or shortening, a disabling arthritis, developing in the same extremity, or in both lower extremities, with indications of earlier, or more severe, arthritis in the injured extremity, including also arthritis of the lumbosacral joints and lumbar spine, if associated with the leg amputation or shortening, will be considered as service incurred, provided, however, that arthritis affecting joints not directly subject to strain as a result of the service incurred amputation will not be granted service connection. This will generally require separate evaluation of the arthritis in the joints directly subject to strain. Amputation, or injury to an upper extremity, is not considered as a causative factor with subsequently developing arthritis, except in joints subject to direct strain or actually injured.

§ 4.59 Painful motion.

With any form of arthritis, painful motion is an important factor of disability, the facial expression, wincing, etc., on pressure or manipulation, should be carefully noted and definitely related to affected joints. Muscle spasm will greatly assist the identification. Sciatic neuritis is not uncommonly caused by arthritis of the spine. The intent of the schedule is to recognize painful motion with joint or periarticular pathology as productive of dis-

ability. It is the intention to recognize actually painful, unstable, or malaligned joints, due to healed injury, as entitled to at least the minimum compensable rating for the joint. Crepitation either in the soft tissues such as the tendons or ligaments, or crepitation within the joint structures should be noted carefully as points of contact which are diseased. Flexion elicits such manifestations. The joints involved should be tested for pain on both active and passive motion, in weight-bearing and nonweight-bearing and, if possible, with the range of the opposite undamaged joint.

§ 4.60 [Reserved]

§ 4.61 Examination.

With any form of arthritis (except traumatic arthritis) it is essential that the examination for rating purposes cover all major joints, with especial reference to Heberden's or Haygarth's nodes.

§ 4.62 Circulatory disturbances.

The circulatory disturbances, especially of the lower extremity following injury in the popliteal space, must not be overlooked, and require rating generally as phlebitis.

§ 4.63 Loss of use of hand or foot.

Loss of use of a hand or a foot, for the purpose of special monthly compensation, will be held to exist when no effective function remains other than that which would be equally well served by an amputation stump at the site of election below elbow or knee with use of a suitable prosthetic appliance. The determination will be made on the basis of the actual remaining function of the hand or foot, whether the acts of grasping, manipulation, etc., in the case of the hand, or of balance and propulsion, etc., in the case of the foot, could be accomplished equally well by an amputation stump with prosthesis.

(a) Extremely unfavorable complete ankylosis of the knee, or complete ankylosis of 2 major joints of an extremity, or shortening of the lower extremity of 3½ inches (8.9 cms.) or more, will be taken as loss of use of the hand or foot involved.

(b) Complete paralysis of the external pupliteral nerve (common peroneal) and consequent, footdrop, accompanied by characteristic organic changes including trophic and circulatory disturbances and other concomitants confirmatory of complete paralysis of this nerve, will be taken as loss of use of the foot.

[29 FR 6718, May 22, 1964, as amended at 43 FR 45349, Oct. 2, 1978]

§ 4.64 Loss of use of both buttocks.

Loss of use of both buttocks shall be deemed to exist when there is severe damage to muscle Group XVII, bilateral (diagnostic code number 5317) and additional disability rendering it impossible for the disabled person, without assistance, to rise from a seated position and from a stooped position (fingers to toes position) and to maintain postural stability (the pelvis upon head of femur). The assistance may be rendered by the person's own hands or arms, and, in the matter of postural stability, by a special appliance.

§ 4.65 [Reserved]

§ 4.66 Sacroiliac joint.

The common cause of disability in this region is arthritis, to be identified in the usual manner. The lumbosacral and sacroiliac joints should be considered as one anatomical segment for rating purposes. X-ray changes from arthritis in this location are decrease or obliteration of the joint space, with the appearance of increased bone density of the sacrum and ilium and sharpening of the margins of the joint. Disability is manifest from erector spinae spasm (not accounted for by other pathology), tenderness on deep palpation and percussion over these joints, loss of normal quickness of motion and resiliency, and postural defects often accompanied by limitation of flexion and extension of the hip. Traumatism is a rare cause of disability in this connection, except when superimposed upon congenital defect or upon an existent arthritis; to permit assumption of pure traumatic origin, objective evidence of damage to the joint, and history of trauma sufficient-

ly severe to injure this extremely strong and practically immovable joint is required. There should be careful consideration of lumbosacral sprain, and the various symptoms of pain and paralysis attributable to disease affecting the lumbar vertebrae and the intervertebral disc.

§ 4.67 Pelvic bones.

The variability of residuals following these fractures necessitates rating on specific residuals, faulty posture, limitation of motion, muscle injury, painful motion of the lumbar spine, manifest by muscle spasm, mild to moderate sciatic neuritis, peripheral nerve injury, or limitation of hip motion.

§ 4.68 Amputation rule.

The combined rating for disabilities of an extremity shall not exceed the rating for the amputation at the elective level, were amputation to be performed. For example, the combined evaluations for disabilities below the knee shall not exceed the 40 percent evaluation, diagnostic code 5165. This 40 percent rating may be further combined with evaluation for disabilities above the knee but not to exceed the above the knee amputation elective level. Painful neuroma of a stump after amputation shall be assigned the evaluation for the elective site of reamputation.

§ 4.69 Major hand.

Left-handedness for the purpose of a major rating will be confirmed by the evidence of others, or by proper tests. Often the handwriting before and after severe injury may be convincing evidence. Only one hand is to be considered major.

§ 4.70 Inadequate examinations.

If the report of examination is inadequate as a basis for the required consideration of service connection and evaluation, the rating agency may request a supplementary report from the examiner giving further details as to the limitations of the disabled person's ordinary activity imposed by the disease, injury, or residual condition, the prognosis for return to, or continuance of, useful work. When the best interests of the service will be advanced by personal conference with the examiner, such conference may be arranged through channels.

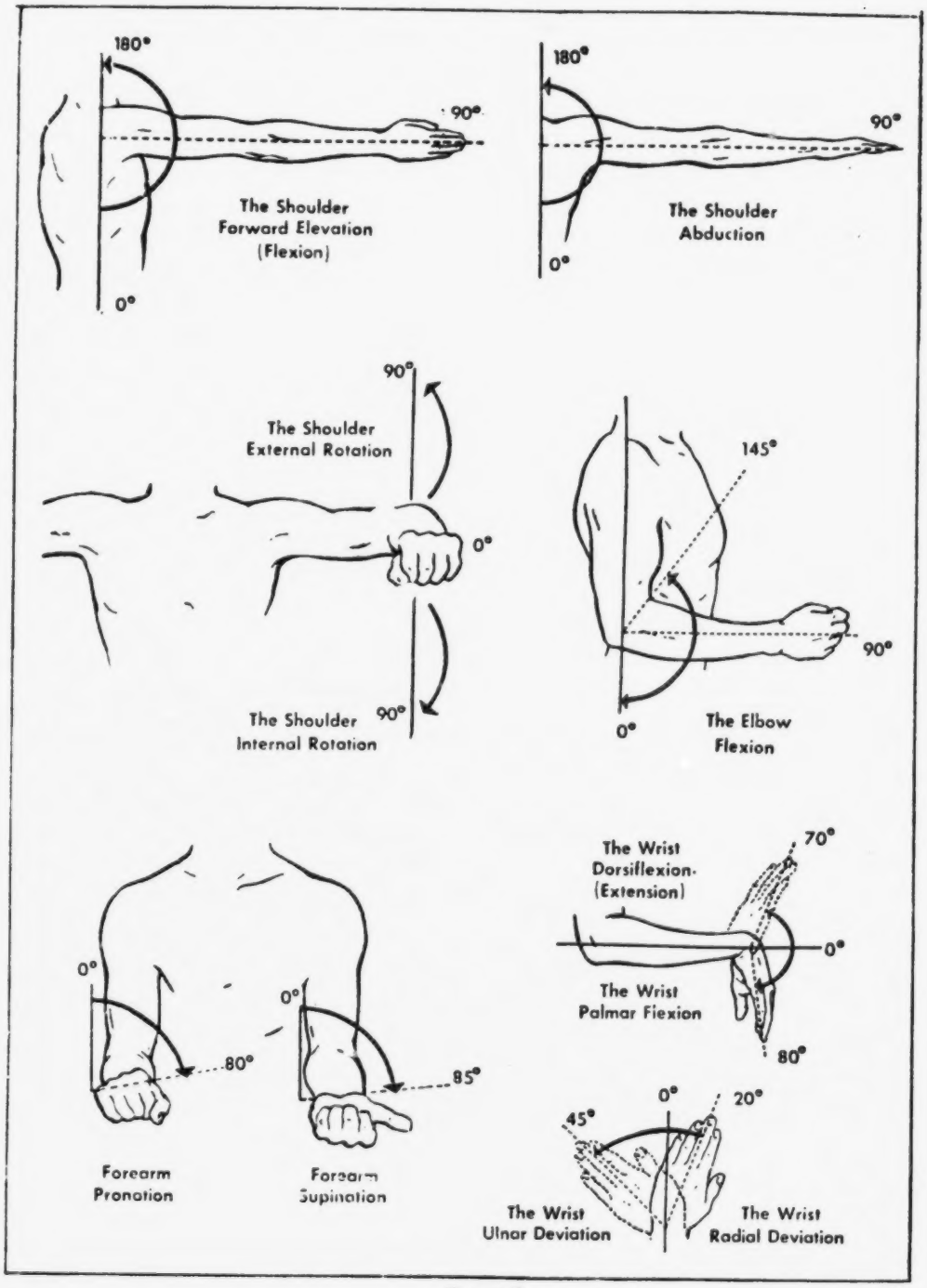

180°
90°
0°
The Shoulder
Forward Elevation
(Flexion)
180°
90°
0°
The Shoulder
Abduction
90°
The Shoulder
External Rotation
0°
The Shoulder
Internal Rotation
90°
145°
90°
0°
The Elbow
Flexion
0°
80°
Forearm
Pronation
0°
85°
Forearm
Supination
The Wrist
Dorsiflexion
(Extension)
70°
0°
The Wrist
Palmar Flexion
80°
45°
0°
20°
The Wrist
Ulnar Deviation
The Wrist
Radial Deviation

PLATE I

§ 4.71 Measurement of ankylosis and joint motion.

Plates I and II provide a standardized description of ankylosis and joint motion measurement. The anatomical position is considered as 0°, with two major exceptions: (a) Shoulder rotation—arm abducted to 90°, elbow flexed to 90° with the position of the forearm reflecting the midpoint 0° between internal and external rotation of the shoulder; and (b) supination and pronation—the arm next to the body, elbow flexed to 90°, and the forearm in midposition 0° between supination and pronation. Motion of the thumb and fingers should be described by appropriate reference to the joints (See Plate III) whose movement is limited, with a statement as to how near, in centimeters, the tip of the thumb can approximate the fingers, or how near the tips of the fingers can approximate the median transverse fold of the palm.

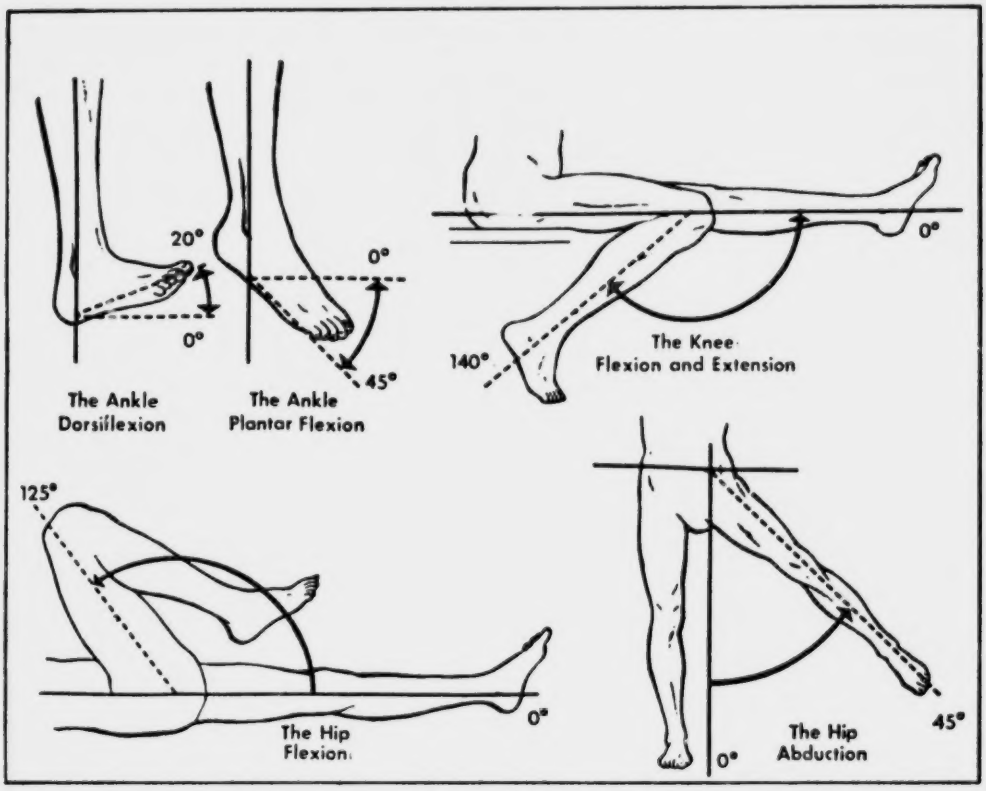


PLATE II

[29 FR 6718, May 22, 1964, as amended at 43 FR 45349, Oct. 2, 1978]

§ 4.71a Schedule of ratings—musculoskeletal system.

ACUTE, SUBACUTE, OR CHRONIC DISEASES

	Rating
5000 Osteomyelitis, acute, subacute, or chronic:	
Of the pelvis, vertebrae, or extending into major joints, or with multiple localization or with long history of intractability and debility, anemia, amyloid liver changes, or other continuous constitutional symptoms	100
Frequent episodes, with constitutional symptoms	60
With definite involucrum or sequestrum, with or without discharging sinus	30
With discharging sinus or other evidence of active infection within the past 5 years	20
Inactive, following repeated episodes, without evidence of active infection in past 5 years	10

ACUTE, SUBACUTE, OR CHRONIC DISEASES—Continued

	Rating
NOTE (1). A rating of 10 percent, as an exception to the amputation rule, is to be assigned in any case of active osteomyelitis where the amputation rating for the affected part is no percent. This 10 percent rating and the other partial ratings of 30 percent or less are to be combined with ratings for ankylosis, limited motion, nonunion or malunion, shortening, etc., subject, of course, to the amputation rule. The 60 percent rating, as it is based on constitutional symptoms, is not subject to the amputation rule. A rating for osteomyelitis will not be applied following cure by removal or radical resection of the affected bone.	

80-118 O—82——21

ACUTE, SUBACUTE, OR CHRONIC DISEASES—Continued

	Rating
NOTE (2). The 20 percent rating on the basis of activity within the past 5 years is not assignable following the initial infection of active osteomyelitis with no subsequent reactivation. The prerequisite for this historical rating is an established recurrent osteomyelitis. To qualify for the 10 percent rating, 2 or more episodes following the initial infection are required. This 20 percent rating or the 10 percent rating, when applicable, will be assigned once only to cover disability at all sites of previously active infection with a future ending date in the case of the 20 percent rating.	100
5001 Bones and joints, tuberculosis of, active or inactive:	
Active	
Inactive: See §§ 4.88b and 4.89.	100
5002 Arthritis rheumatoid (atrophic) *As an active process:*	
With constitutional manifestations associated with active joint involvement, totally incapacitating	60
Less than criteria for 100% but with weight loss and anemia productive of severe impairment of health or severely incapacitating exacerbations occurring 4 or more times a year or a lesser number over prolonged periods	40
Symptom combinations productive of definite impairment of health objectively supported by examination findings or incapacitating exacerbations occurring 3 or more times a year	20
One or two exacerbations a year in a well-established diagnosis	
For chronic residuals:	
For residuals such as limitation of motion or ankylosis, favorable or unfavorable, rate under the appropriate diagnostic codes for the specific joints involved. Where, however, the limitation of motion of the specific joint or joints involved is noncompensable under the codes a rating of 10 percent is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5002. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion.	
NOTE. The ratings for the active process will not be combined with the residual ratings for limitation of motion or ankylosis. Assign the higher evaluation.	
5003 Arthritis, degenerative (hypertrophic or osteoarthritis):	
Degenerative arthritis established by X-ray findings will be rated on the basis of limitation of motion under the appropriate diagnostic codes for the specific joint or joints involved (DC 5200 etc.). When however, the limitation of motion of the specific joint or joints involved is noncompensable under the appropriate diagnostic codes, a rating of 10 pct is for application for each such major joint or group of minor joints affected by limitation of motion, to be combined, not added under diagnostic code 5003. Limitation of motion must be objectively confirmed by findings such as swelling, muscle spasm, or satisfactory evidence of painful motion. In the absence of limitation of motion, rate as below:	
With X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups, with occasional incapacitating exacerbations	20
With X-ray evidence of involvement of 2 or more major joints or 2 or more minor joint groups	10
NOTE (1). The 20 pct and 10 pct ratings based on X-ray findings, above, will not be combined with ratings based on limitation of motion.	
NOTE (2). The 20 pct and 10 pct ratings based on X-ray findings, above, will not be utilized in rating conditions listed under diagnostic codes 5013 to 5024, inclusive.	
5004 Arthritis, gonorrheal.	
5005 Arthritis, pneumococcic.	
5006 Arthritis, typhoid.	
5007 Arthritis, syphilitic.	
5008 Arthritis, streptococcic.	
5009 Arthritis, other types (specify).	
With the types of arthritis, diagnostic codes 5004 through 5009, rate the disability as rheumatoid arthritis.	
5010 Arthritis, due to trauma, substantiated by X-ray findings: Rate as arthritis, degenerative.	
5011 Bones, caisson disease of: Rate as arthritis, cord involvement, or deafness, depending on the severity of disabling manifestations.	
5012 Bones, new growths of, malignant	100
NOTE. The 100 percent rating will be continued for 1 year following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.	
5013 Osteoporosis, with joint manifestations.	
5014 Osteomalacia.	
5015 Bones, new growths of, benign.	
5016 Osteitis deformans.	
5017 Gout.	
5018 Hydrarthrosis, intermittent.	
5019 Bursitis.	
5020 Synovitis.	
5021 Myositis.	
5022 Periostitis.	
5023 Myositis ossificans.	
5024 Tenosynovitis.	

ACUTE, SUBACUTE, OR CHRONIC DISEASES—Continued

	Rating
The diseases under diagnostic codes 5013 through 5024 will be rated on limitation of motion of affected parts, as arthritis, degenerative, except gout which will be rated under diagnostic code 5002.	

PROSTHETIC IMPLANTS

	Rating	
	Major	Minor
5051 Shoulder replacement (prosthesis).		
Prosthetic replacement of the shoulder joint:		
For 1 year following implantation of prosthesis	100	100
With chronic residuals consisting of severe, painful motion or weakness in the affected extremity	60	50
With intermediate degrees of residual weakness, pain or limitation of motion, rate by analogy to diagnostic codes 5200 and 5203.		
Minimum rating	30	20
5052 Elbow replacement (prosthesis).		
Prosthetic replacement of the elbow joint:		
For 1 year following implantation of prosthesis	100	100
With chronic residuals consisting of severe painful motion or weakness in the affected extremity	50	40
With intermediate degrees of residual weakness, pain or limitation of motion rate by analogy to diagnostic codes 5205 through 5208.		
Minimum evaluation	30	20
5053 Wrist replacement (prosthesis).		
Prosthetic replacement of wrist joint:		
For 1 year following implantation of prosthesis	100	100
With chronic residuals consisting of severe, painful motion or weakness in the affected extremity	40	30
With intermediate degrees of residual weakness, pain or limitation of motion, rate by analogy to diagnostic code 5214.		
Minimum rating	20	20
NOTE.—The 100 pct rating for 1 year following implantation of prosthesis will commence after initial grant of the 1-month total rating assigned under § 4.30 following hospital discharge.		
5054 Hip replacement (prosthesis).		
Prosthetic replacement of the head of the femur or of the acetabulum:		
For 1 year following implantation of prosthesis		100

PROSTHETIC IMPLANTS—Continued

	Rating	
	Major	Minor
Following implantation of prosthesis with painful motion or weakness such as to require the use of crutches		[1] 90
Markedly severe residual weakness, pain or limitation of motion following implantation of prosthesis		70
Moderately severe residuals of weakness, pain or limitation of motion		50
Minimum rating		30
5055 Knee replacement (prosthesis).		
Prosthetic replacement of knee joint:		
For 1 year following implantation of prosthesis		100
With chronic residuals consisting of severe painful motion or weakness in the affected extremity		60
With intermediate degrees of residual weakness, pain or limitation of motion rate by analogy to diagnostic codes 5256, 5261, or 5262.		
Minimum rating		30
5056 Ankle replacement (prosthesis).		
Prosthetic replacement of ankle joint:		
For 1 year following implantation of prosthesis		100
With chronic residuals consisting of severe painful motion or weakness		40
With intermediate degrees of residual weakness, pain or limitation of motion rate by analogy to 5270 or 5271.		
Minimum rating		20
NOTE (1). The 100 pct rating for 1 year following implantation of prosthesis will commence after initial grant of the 1-month total rating assigned under § 4.30 following hospital discharge.		
NOTE (2). Special monthly compensation is assignable during the 100 pct rating period the earliest date permanent use of crutches is established.		

COMBINATIONS OF DISABILITIES

5104 Anatomical loss of one hand and loss of use of one foot		[1] 100
5105 Anatomical loss of one foot and loss of use of one hand		[1] 100
5106 Anatomical loss of both hands		[1] 100
5107 Anatomical loss of both feet		[1] 100
5108 Anatomical loss of one hand and one foot		[1] 100
5109 Loss of use of both hands		[1] 100
5110 Loss of use of both feet		[1] 100
5111 Loss of use of one hand and one foot		[1] 100

[1] Also entitled to special monthly compensation.

TABLE II

RATINGS FOR MULTIPLE LOSSES OF EXTREMITIES WITH DICTATOR'S RATING CODE AND VA REGULATION

IMPAIRMENT OF ONE EXTREMITY	IMPAIRMENT OF OTHER EXTREMITY					
	ANAT. LOSS OR LOSS OF USE BELOW ELBOW	ANAT. LOSS OR LOSS OF USE BELOW KNEE	ANAT. LOSS OR LOSS OF USE ABOVE ELBOW (PREVENTING USE OF PROSTHESIS)	ANAT. LOSS OR LOSS OF USE ABOVE KNEE (PREVENTING USE OF PROSTHESIS)	ANAT. LOSS NEAR SHOULDER PREVENTING USE OF PROSTHESIS	ANAT. LOSS NEAR HIP PREVENTING USE OF PROSTHESIS
ANAT. LOSS OR LOSS OF USE BELOW ELBOW	L CODES L 1 a b or c VAR 1350 (B) (38 CFR 3.350 (b))	L CODES L 1 g h or i VAR 1350 (B) (38 CFR 3.350 (b))	L 1/2 CODE L 2 a VAR 1350 (F)(1)(a) (38 CFR 3.350 (f)(1)(i))	L 1/2 CODE L 2 b or d VAR 1350 (F)(1)(a) (38 CFR 3.350 (f)(1)(i))	M CODE M 3 a VAR 1350 (F)(1)(b) (38 CFR 3.350 (f)(1)(ii))	M CODE M 3 c VAR 1350 (F)(1)(b) (38 CFR 3.350 (f)(1)(ii))
ANAT. LOSS OR LOSS OF USE BELOW KNEE	L CODES L 1 g h or i VAR 1350 (B) (38 CFR 3.350 (b))	L CODES L 1 d e or f VAR 1350 (B) (38 CFR 3.350 (b))	L 1/2 CODE L 2 b or d VAR 1350 (F)(1)(a) (38 CFR 3.350 (f)(1)(i))	L 1/2 CODE L 2 c VAR 1350 (F)(1)(a) (38 CFR 3.350 (f)(1)(i))	M CODE M 3 c VAR 1350 (F)(1)(b)) (38 CFR 3.350 (f)(1)(ii))	M CODE M 3 b VAR 1350 (F)(1)(b) (38 CFR 3.350 (f)(1)(ii))
ANAT. LOSS OR LOSS OF USE ABOVE ELBOW (PREVENTING USE OF PROSTHESIS)	L 1/2 CODE L 2 a VAR 1350 (F)(1)(a) (38 CFR 3.350 (f)(1)(i))	L 1/2 CODE L 2 b or d VAR 1350 (F)(1)(a) (38 CFR 3.350 (f)(1)(i))	M CODE M 1 a VAR 1350 (C) (38 CFR 3.350 (c))	M CODE M 2 a or b VAR 1350 (C) (38 CFR 3.350 (c))	M 1/2 CODE M 4 a VAR 1350 (F)(1)(c) (38 CFR 3.350 (f)(1)(iii))	M 1/2 CODE M 4 c or d VAR 1350 (F)(1)(c) (38 CFR 3.350 (f)(1)(iii))
ANAT. LOSS OR LOSS OF USE ABOVE KNEE (PREVENTING USE OF PROSTHESIS)	L 1/2 CODE L 2 b or d VAR 1350 (F)(1)(a) (38 CFR 3.350 (f)(1)(i))	L 1/2 CODE L 2 c VAR 1350 (F)(1)(a) (38 CFR 3.350 (f)(1)(i))	M CODE M 2 a or b VAR 1350 (C) (38 CFR 3.350 (c))	M CODE M 1 b VAR 1350 (C) (38 CFR 3.350 (c))	M 1/2 CODE M 4 c or d VAR 1350 (F)(1)(c) (38 CFR 3.350 (F)(1)(iii))	M 1/2 CODE M 4 b VAR 1350 (F)(1)(c) (38 CFR 3.350 (f)(1)(iii))
ANAT. LOSS NEAR SHOULDER PREVENTING USE OF PROSTHESIS	M CODE M 3 a VAR 1350 (F)(1)(b) (38 CFR 3.350 (f)(1)(ii))	M CODE M 3 c VAR 1350 (F)(1)(b) (38 CFR 3.350 (f)(1)(ii))	M 1/2 CODE M 4 a VAR 1350 (F)(1)(c) (38 CFR 3.350 (f)(1)(iii))	M 1/2 CODE M 4 c or d VAR 1350 (F)(1)(c) (38 CFR 3.350 (f)(1)(iii))	N CODE N 1 VAR 1350 (D) (38 CFR 3.350 (d))	N CODE N 2 VAR 1350 (D) (38 CFR 3.350 (d))
ANAT. LOSS NEAR HIP PREVENTING USE OF PROSTHESIS	M CODE M 3 c VAR 1350 (F)(1)(b) (38 CFR 3.350 (f)(1)(ii))	M CODE M 3 b VAR 1350 (F)(1)(b) (38 CFR 3.350 (f)(1)(ii))	M 1/2 CODE M 4 c or d VAR 1350 (F)(1)(c) (38 CFR 3.350 (f)(1)(iii))	M 1/2 CODE M 4 b VAR 1350 (F)(1)(c) (38 CFR 3.350 (f)(1)(iii))	N CODE N 2 VAR 1350 (D) (38 CFR 3.350 (d))	N CODE N 1 VAR 1350 (D) (38 CFR 3.350 (d))

NOTE: Need for aid and attendance or permanently bedridden qualifies for subpar. L. Code L 1 k or L. VAR 1350 (B) (38 CFR 3.350 (b)). Paraplegia with loss of use of both lower extremities and loss of anal and bladder sphincter control qualifies for subpar. O. Code O 1 VAR 1350 (E) (38 CFR 3.350 (e)). Any of the above plus additional disabilities rated 50% or 100% qualifies for the next intermediate or full rate Code P 1 or Code P 2 respectively. VAR 1350 (F)(3) and (4) (38 CFR 3.350 (f)(3) and (4)).

AMPUTATIONS: UPPER EXTREMITY

	Rating	
	Major	Minor
Arm, amputation of:		
5120 Disarticulation	[1] 90	[1] 90
5121 Above insertion of deltoid	[1] 90	[1] 80
5122 Below insertion of deltoid	[1] 80	[1] 70
Forearm, amputation of:		
5123 Above insertion of pronator teres	[1] 80	[1] 70
5124 Below insertion of pronator teres	[1] 70	[1] 60
5125 Hand, loss of use of	[1] 70	[1] 60
MULTIPLE FINGER AMPUTATIONS		
5126 Five digits of one hand, amputation of	[1] 70	[1] 60
Four digits of one hand, amputation of:		
5127 Thumb, index, middle and ring	[1] 70	[1] 60
5128 Thumb, index, middle and little	[1] 70	[1] 60
5129 Thumb, index, ring and little	[1] 70	[1] 60
5130 Thumb, middle, ring and little	[1] 70	[1] 60
5131 Index, middle, ring and little	60	50
Three digits of one hand, amputation of:		
5132 Thumb, index and middle	60	50
5133 Thumb, index and ring	60	50
5134 Thumb, index and little	60	50
5135 Thumb, middle and ring	60	50
5136 Thumb, middle and little	60	50
5137 Thumb, ring and little	60	50
5138 Index, middle and ring	50	40
5139 Index, middle and little	50	40
5140 Index, ring and little	50	40
5141 Middle, ring and little	40	30
Two digits of one hand, amputation of:		
5142 Thumb and index	50	40
5143 Thumb and middle	50	40
5144 Thumb and ring	50	40
5145 Thumb and little	50	40
5146 Index and middle	40	30
5147 Index and ring	40	30
5148 Index and little	40	30
5149 Middle and ring	30	20
5150 Middle and little	30	20
5151 Ring and little	30	20
(a) The ratings for multiple finger amputations apply to amputations at the proximal interphalangeal joints or through proximal phalanges.		
(b) Amputation through middle phalanges will be rated as prescribed for unfavorable ankylosis of the fingers.		
(c) Amputations at distal joints, or through distal phalanges, other than negligible losses, will be rated as prescribed for favorable ankylosis of the fingers.		
(d) Amputation or resection of metacarpal bones (more than one-half the bone lost) in multiple fingers injuries will require a rating of 10 percent added to (not combined with) the ratings, multiple finger amputations, subject to the amputation rule applied to the forearm.		
(e) Combinations of finger amputations at various levels, or finger amputations with ankylosis or limitation of motion of the fingers will be rated on the basis of the grade of disability; i.e., amputation, unfavorable ankylosis, most representative of the levels or combinations. With an even number of fingers involved, and adjacent grades of disability, select the higher of the two grades.		
(f) Loss of use of the hand will be held to exist when no effective function remains other than that which would be equally well served by an amputation stump with a suitable prosthetic applicance.		
SINGLE FINGER AMPUTATIONS		
5152 Thumb, amputation of:		
With metacarpal resection	40	30
At metacarpophalangeal joint or through proximal phalanx	30	20
At distal joint or through distal phalanx	20	20
5153 Index finger, amputation of		
With metacarpal resection (more than one-half the bone lost)	30	20
Without metacarpal resection, at proximal interphalangeal joint or proximal thereto	20	20
Through middle phalanx or at distal joint	10	10
5154 Middle finger, amputation of:		
With metacarpal resection (more than one-half the bone lost)	20	20
Without metacarpal resection, at proximal interphalangeal joint or proximal thereto	10	10
5155 Ring finger, amputation of:		
With metacarpal resection (more than one-half the bone lost)	20	20
Without metacarpal resection, at proximal interphalangeal joint or proximal thereto	10	10
5156 Little finger, amputation of:		
With metacarpal resection (more than one-half the bone lost)	20	20
Without metacarpal resection, at proximal interphalangeal joint or proximal thereto	10	10
NOTE. The single finger amputation ratings are the only applicable ratings for amputations of whole or part of single fingers.		

[1] Entitled to special monthly compensation.

SINGLE FINGER AMPUTATIONS

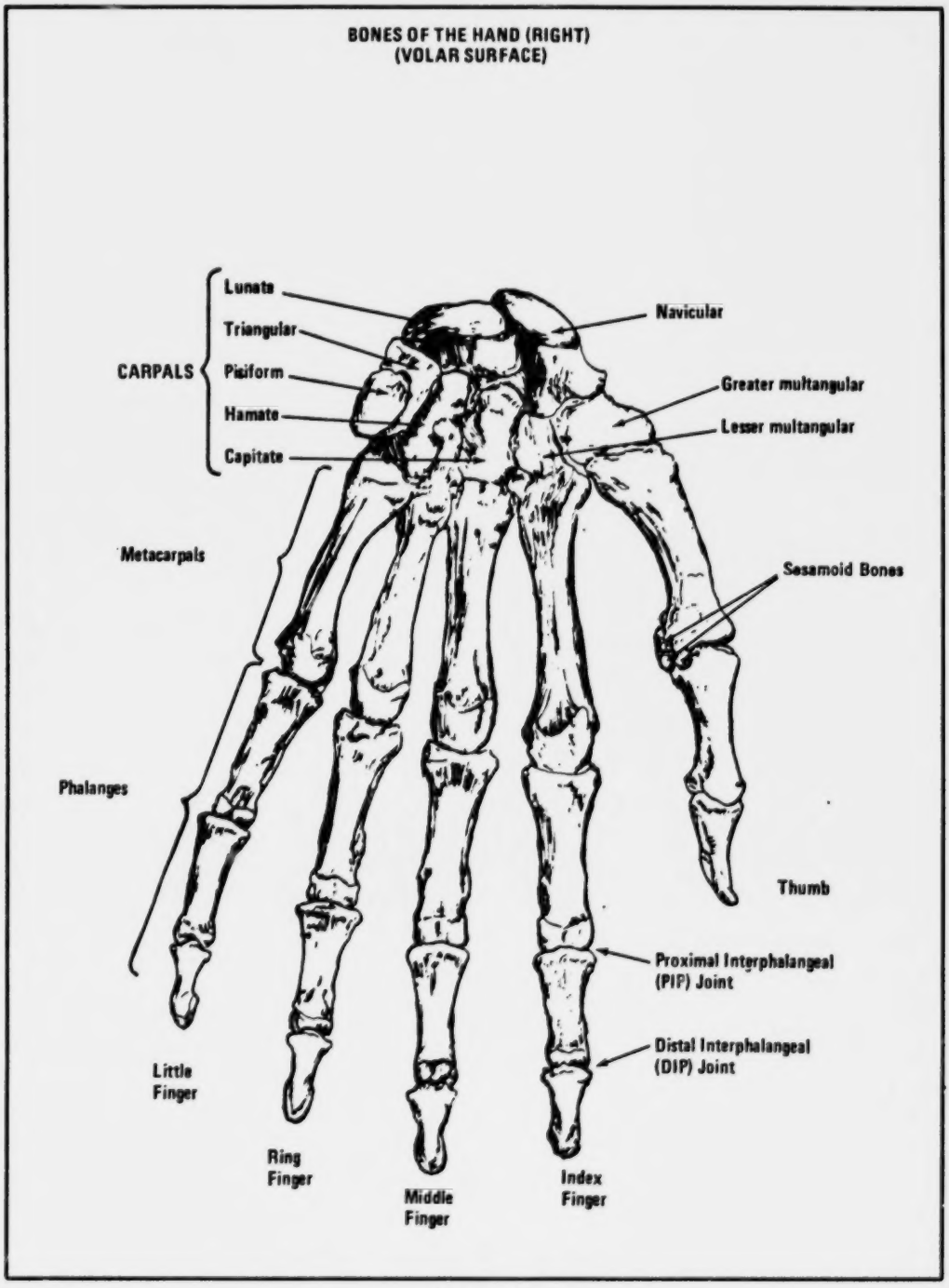


PLATE III

AMPUTATIONS: LOWER EXTREMITY

	Rating
Thigh, amputation of:	
5160 Disarticulation, with loss of extrinsic pelvic girdle muscles	[2] 90
5161 Upper third, one-third of the distance from perineum to knee joint measured from perineum	[2] 80
5162 Middle or lower thirds	[2] 60
Leg, amputation of:	
5163 With defective stump, thigh amputation recommended	[2] 60
5164 Amputation not improvable by prosthesis controlled by natural knee action	[2] 60
5165 At a lower level, permitting prosthesis	[2] 40
5166 Forefoot, amputation proximal to metatarsal bones (more than one-half of metatarsal loss)	[2] 40
5167 Foot, loss of use of	[2] 40
5170 Toes, all, amputation of, without metatarsal loss	30
5171 Toe, great, amputation of:	
With removal of metatarsal head	30
Without metatarsal involvement	10

AMPUTATIONS: LOWER EXTREMITY—Continued

	Rating
5172 Toes, other than great, amputation of, with removal of metatarsal head:	
One or two	20
Without metatarsal involvement	0
5173 Toes, three or four, amputation of, without metatarsal involvement:	
Including great toe	20
Not including great toe	10
NOTE 1: The 100 percent rating for 1 year following implantation of prosthesis will commence after initial grant of the 1 month total rating assigned under § 4.30 following hospital discharge.	
NOTE 2: Special monthly compensation is assignable during the 100 percent rating period the earliest date permanent use of crutches is established.	

[2] Also entitled to special monthly compensation.

AMPUTATIONS: LOWER EXTREMITY

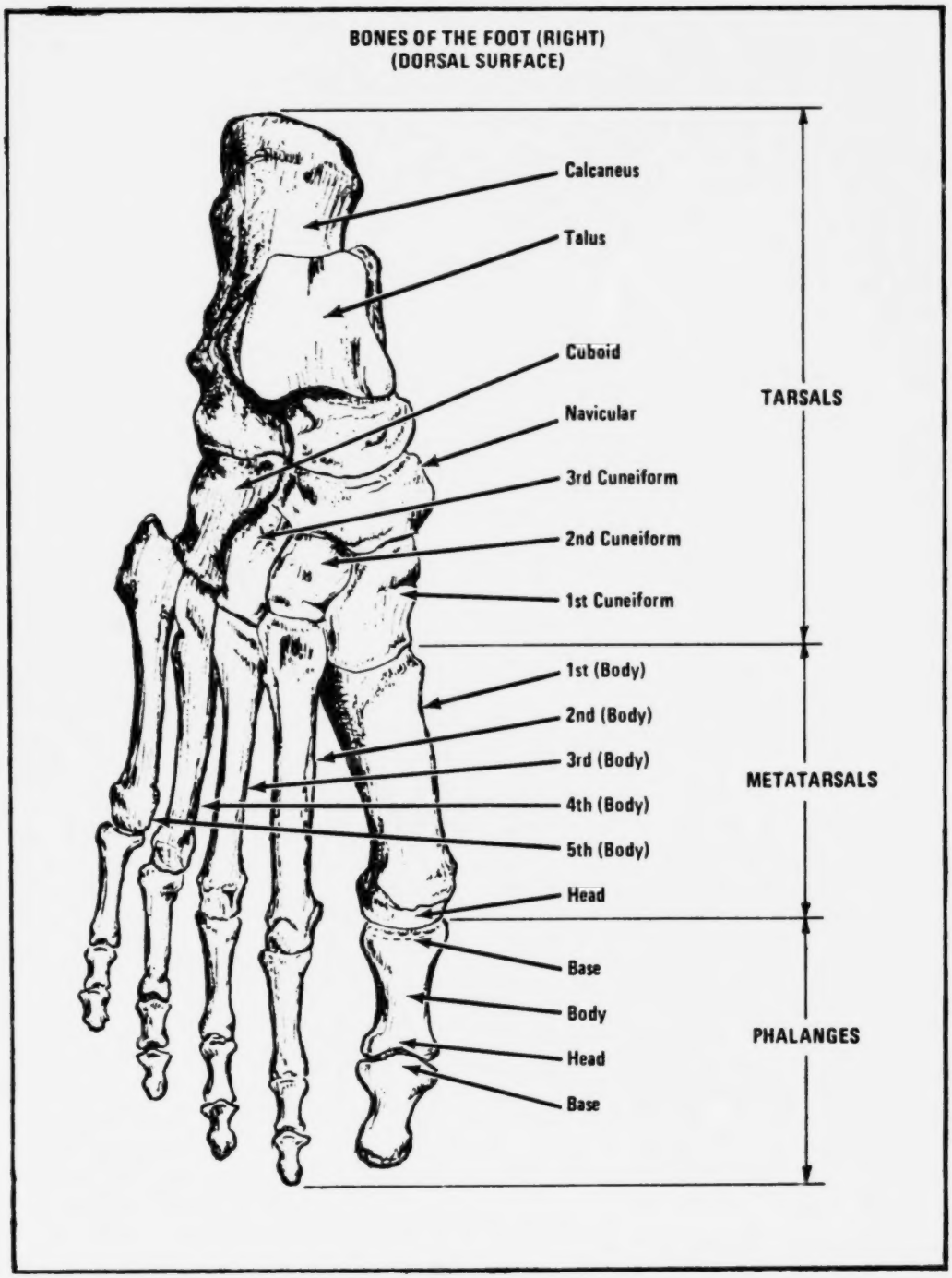


PLATE IV

THE SHOULDER AND ARM

	Rating	
	Major	Minor
5200 Scapulohumeral articulation, ankylosis of:		
NOTE. The scapula and humerus move as one piece.		
Unfavorable, abduction limited to 25° from side	50	40
Intermediate between favorable and unfavorable	40	30
Favorable, abduction to 60°, can reach mouth and head	30	20
5201 Arm, limitation of motion of:		
To 25° from side	40	30
Midway between side and shoulder level	30	20
At shoulder level	20	20
5202 Humerus, other impairment of:		
Loss of head of (flail shoulder)	80	70
Nonunion of (false flail joint)	60	50
Fibrous union of	50	40
Recurrent dislocation of at scapulohumeral joint.		
With frequent episodes and guarding of all arm movements	30	20
With infrequent episodes, and guarding of movement only at shoulder level	20	20
Malunion of:		
Marked deformity	30	20
Moderate deformity	20	20
5203 Clavicle or scapula, impairment of:		
Dislocation of	20	20
Nonunion of:		
With loose movement	20	20
Without loose movement	10	10
Malunion of	10	10
Or rate on impairment of function of contiguous joint.		

THE ELBOW AND FOREARM

	Rating	
	Major	Minor
5205 Elbow, ankylosis of:		
Unfavorable, at an angle of less than 50° or with complete loss of supination or pronation	60	50
Intermediate, at an angle of more than 90°, or between 70° and 50°	50	40
Favorable, at an angle between 90° and 70°	40	30
5206 Forearm, limitation of flexion of:		
Flexion limited to 45°	50	40
Flexion limited to 55°	40	30
Flexion limited to 70°	30	20
Flexion limited to 90°	20	20
Flexion limited to 100°	10	10
Flexion limited to 110°	0	0
5207 Forearm, limitation of extension of:		
Extension limited to 110°	50	40
Extension limited to 100°	40	30
Extension limited to 90°	30	20
Extension limited to 75°	20	20
Extension limited to 60°	10	10
Extension limited to 45°	10	10

THE ELBOW AND FOREARM—Continued

	Rating	
	Major	Minor
5208 Forearm, flexion limited to 100° and extension to 45°	20	20
5209 Elbow, other impairment of Flail joint	60	50
Joint fracture, with marked cubitus varus or cubitus valgus deformity or with ununited fracture of head of radius	20	20
5210 Radius and ulna, nonunion of, with flail false joint	50	40
5211 Ulna, impairment of:		
Nonunion in upper half, with false movement:		
With loss of bone substance (1 inch (2.5 cms.) or more) and marked deformity	40	30
Without loss of bone substance or deformity	30	20
Nonunion in lower half	20	20
Malunion of, with bad alignment	10	10
5212 Radius, impairment of:		
Nonunion in lower half, with false movement:		
With loss of bone substance (1 inch (2.5 cms.) or more) and marked deformity	40	30
Without loss of bone substance or deformity	30	20
Nonunion in upper half	20	20
Malunion of, with bad alignment	10	10
5213 Supination and pronation, impairment of:		
Loss of (bone fusion):		
The hand fixed in supination or hyperpronation	40	30
The hand fixed in full pronation	30	20
The hand fixed near the middle of the arc or moderate pronation	20	20
Limitation of pronation:		
Motion lost beyond middle of arc	30	20
Motion lost beyond last quarter of arc, the hand does not approach full pronation	20	20
Limitation of supination:		
To 30° or less	10	10
NOTE. In all the forearm and wrist injuries, codes 5205 through 5213, multiple impaired finger movements due to tendon tie-up, muscle or nerve injury, are to be separately rated and combined not to exceed rating for loss of use of hand.		

THE WRIST

	Rating	
	Major	Minor
5214 Wrist, ankylosis of:		
Unfavorable, in any degree of palmar flexion, or with ulnar or radial deviation	50	40
Any other position, except favorable	40	30
Favorable in 20° to 30° dorsiflexion	30	20

THE WRIST—Continued

	Rating	
	Major	Minor
NOTE.—Extremely unfavorable ankylosis will be rated as loss of use of hands under diagnostic code 5125.		
5215 Wrist, limitation of motion of:		
Dorsiflexion less than 15°	10	10
Palmar flexion limited in line with forearm	10	10

MULTIPLE FINGERS: UNFAVORABLE ANKYLOSIS

	Rating	
	Major	Minor
In classifying the severity of ankylosis and limitation of motion of single digits and combinations of digits the following rules will be observed:		
(1) Ankylosis of both the metacarpophalangeal and proximal interphalangeal joints, with either joint in extension or in extreme flexion, will be rated as amputation.		
(2) Ankylosis of both the metacarpophalangeal and proximal interphalangeal joints, even though each is individually in favorable position, will be rated as unfavorable ankylosis.		
(3) With only one joint of a digit ankylosed or limited in its motion, the determination will be made on the basis of whether motion is possible to within 2 inches (5.1 cms.) of the median transverse fold of the palm; when so possible, the rating will be for favorable ankylosis, otherwise unfavorable.		
(4) With the thumb, the carpometacarpal joint is to be regarded as comparable to the metacarpophalangeal joint of other digits.		
5216 Five digits of one hand, unfavorable ankylosis of	60	50
5217 Four digits of one hand, unfavorable ankylosis of:		
Thumb, index, middle and ring	60	50
Thumb, index, middle and little	60	50
Thumb, index, ring and little	60	50
Thumb, middle, ring and little	60	50
Index, middle, ring and little	50	40
5218 Three digits of one hand, unfavorable ankylosis of:		
Thumb, index and middle	50	40
Thumb, index and ring	50	40
Thumb, index and little	50	40
Thumb, middle and ring	50	40

MULTIPLE FINGERS: UNFAVORABLE ANKYLOSIS—Continued

	Rating	
	Major	Minor
Thumb, middle and little	50	40
Thumb, ring and little	50	40
Index, middle and ring	40	30
Index, middle and little	40	30
Index, ring and little	40	30
Middle, ring and little	30	20
5219 Two digits of one hand, unfavorable ankylosis of:		
Thumb and index	40	30
Thumb and middle	40	30
Thumb and ring	40	30
Thumb and little	40	30
Index and middle	30	20
Index and ring	30	20
Index and little	30	20
Middle and ring	20	20
Middle and little	20	20
Ring and little	20	20
(a) Extremely unfavorable ankylosis of the fingers, all joints in extension or in extreme flexion, or with rotation and angulation of bones, will be rated as amputation.		
(b) The ratings for codes 5216 through 5219 apply to unfavorable ankylosis or limited motion preventing flexion of tips to within 2 inches (5.1 cms.) of median transverse fold of the palm.		
(c) Combinations of finger amputations at various levels, or of finger amputations with ankylosis or limitation of motion of the fingers will be rated on the basis of the grade of disability, i.e., amputation, unfavorable ankylosis, or favorable ankylosis, most representative of the levels or combinations. With an even number of fingers involved, and adjacent grades of disability, select the higher of the two grades.		

MULTIPLE FINGERS: FAVORABLE ANKYLOSIS

	Rating	
	Major	Minor
In classifying the severity of ankylosis and limitation of motion of single digits and combinations of digits the following rules will be observed:		
(1) Ankylosis of both the metacarpophalangeal and proximal interphalangeal joints, with either joint in extension or in extreme flexion, will be rated as amputation.		

MULTIPLE FINGERS: FAVORABLE ANKYLOSIS—Continued

	Rating	
	Major	Minor
(2) Ankylosis of both the metacarpophalangeal and proximal interphalangeal joints, even though each is individually in favorable position, will be rated as unfavorable ankylosis.		
(3) With only one joint of a digit ankylosed or limited in its motion, the determination will be made on the basis of whether motion is possible to within 2 inches (5.1 cms.) of the median transverse fold of the palm; when so possible, the rating will be for favorable ankylosis, otherwise unfavorable.		
(4) With the thumb, the carpometacarpal joint is to be regarded as comparable to the metacarpophalangeal joint of other digits.		
5220 Five digits of one hand, favorable ankylosis of	50	40
5221 Four digits of one hand, favorable ankylosis of:		
Thumb, index, middle and ring	50	40
Thumb, index, middle and little	50	40
Thumb, index, ring and little	50	40
Thumb, middle, ring and little	50	40
Index, middle, ring and little	40	30
5222 Three digits of one hand, favorable ankylosis of:		
Thumb, index and middle	40	30
Thumb, index and ring	40	30
Thumb, index and little	40	30
Thumb, middle and ring	40	30
Thumb, middle and little	40	30
Thumb, ring and little	40	30
Index, middle and ring	30	20
Index, middle and little	30	20
Index, ring and little	30	20
Middle, ring and little	20	20
5223 Two digits of one hand, favorable ankylosis of:		
Thumb and index	30	20
Thumb and middle	30	20
Thumb and ring	30	20
Thumb and little	30	20
Index and middle	20	20
Index and ring	20	20
Index and little	20	20
Middle and ring	10	10
Middle and little	10	10
Ring and little	10	10
(a) The ratings for codes 5220 through 5223 apply to favorable ankylosis or limited motion permitting flexion of the tips to within 2 inches (5.1 cms.) of the transverse fold of the palm. Limitation of motion of less than 1 inch (2.5 cms.) in either direction is not considered disabling.		

MULTIPLE FINGERS: FAVORABLE ANKYLOSIS—Continued

	Rating	
	Major	Minor
(b) Combination of finger amputations at various levels, or of finger amputations with ankylosis or limitation of motion of the fingers will be rated on the basis of the grade of disability, i.e., amputation, unfavorable ankylosis, or favorable ankylosis, most representative of the levels or combinations. With an even number of fingers involved, and adjacent grades of disability, select the higher of the two grades.		

ANKYLOSIS OF INDIVIDUAL FINGERS

	Rating	
	Major	Minor
5224 Thumb, ankylosis of:		
Unfavorable	20	20
Favorable	10	10
5225 Index finger, ankylosis of:		
Unfavorable	10	10
Favorable	10	10
5226 Middle finger, ankylosis of:		
Unfavorable	10	10
Favorable	10	10
5227 Finger, any other, ankylosis of	0	0
NOTE. Extremely unfavorable ankylosis will be rated as amputation under diagnostic codes 5152 through 5156.		

THE HIP AND THIGH

	Rating
5250 Hip, ankylosis of:	
Unfavorable, extremely unfavorable ankylosis, the foot not reaching ground, crutches necessitated	[3] 90
Intermediate	70
Favorable, in flexion at an angle between 20° and 40°, and slight adduction or abduction	60
5251 Thigh, limitation of extension of:	
Extension limited to 5°	10
5252 Thigh, limitation of flexion of:	
Flexion limited to 10°	40
Flexion limited to 20°	30
Flexion limited to 30°	20
Flexion limited to 45°	10
5253 Thigh, impairment of:	
Limitation of abduction of, motion lost beyond 10°	20

THE HIP AND THIGH—Continued

	Rating
Limitation of adduction of, cannot cross legs	10
Limitation of rotation of, cannot toe-out more than 15°, affected leg	10
5254 Hip, flail joint	80
5255 Femur, impairment of:	
Fracture of shaft or anatomical neck of:	
With nonunion, with loose motion (spiral or oblique fracture)	80
With nonunion, without loose motion, weightbearing preserved with aid of brace	60
Fracture of surgical neck of, with false joint	60
Malunion of:	
With marked knee or hip disability	30
With moderate knee or hip disability	20
With slight knee or hip disability	10

[3] Entitled to special monthly compensation.

THE KNEE AND LEG

	Rating
5256 Knee, ankylosis of:	
Extremely unfavorable, in flexion at an angle of 45° or more	60
In flexion between 20° and 45°	50
In flexion between 10° and 20°	40
Favorable angle in full extension, or in slight flexion between 0° and 10°	30
5257 Knee, other impairment of:	
Recurrent subluxation or lateral instability:	
Severe	30
Moderate	20
Slight	10
5258 Cartilage, semilunar, dislocated, with frequent episodes of "locking," pain, and effusion into the joint	20
5259 Cartilage, semilunar, removal of, symptomatic	10
5260 Leg, limitation of flexion of:	
Flexion limited to 15°	30
Flexion limited to 30°	20
Flexion limited to 45°	10
Flexion limited to 60°	0
5261 Leg, limitation of extension of:	
Extension limited to 45°	50
Extension limited to 30°	40
Extension limited to 20°	30
Extension limited to 15°	20
Extension limited to 10°	10
Extension limited to 5°	0
5262 Tibia and fibula, impairment of:	
Nonunion of, with loose motion, requiring brace	40
Malunion of:	
With marked knee or ankle disability	30
With moderate knee or ankle disability	20
With slight knee or ankle disability	10
5263 Genu recurvatum (acquired, traumatic, with weakness and insecurity in weight-bearing objectively demonstrated)	10

THE ANKLE

	Rating
5270 Ankle, ankylosis of:	
In plantar flexion at more than 40°, or in dorsiflexion at more than 10° or with abduction, adduction, inversion or eversion deformity	40
In plantar flexion, between 30° and 40°, or in dorsiflexion, between 0° and 10°	30
In plantar flexion, less than 30°	20
5271 Ankle, limited motion of:	
Marked	20
Moderate	10
5272 Subastragalar or tarsal joint, ankylosis of:	
In poor weight-bearing position	20
In good weight-bearing position	10
5273 Os calcis or astragalus, malunion of:	
Marked deformity	20
Moderate deformity	10
5274 Astragalectomy	20

SHORTENING OF THE LOWER EXTREMITY

	Rating
5275 Bones, of the lower extremity, shortening of:	
Over 4 inches (10.2 cms.)	[3] 60
3½ to 4 inches (8.9 cms. to 10.2 cms.)	[3] 50
3 to 3½ inches (7.6 cms. to 8.9 cms.)	40
2½ to 3 inches (6.4 cms. to 7.6 cms.)	30
2 to 2½ inches (5.1 cms. to 6.4 cms.)	20
1¼ to 2 inches (3.2 cms. to 5.1 cms.)	10
NOTE.—Measure both lower extremities from anterior superior spine of the ilium to the internal malleolus of the tibia. Not to be combined with other ratings for fracture or faulty union in the same extremity.	

[3] Also entitled to special monthly compensation.

THE FOOT

	Rating
5276 Flatfoot, acquired:	
Pronounced; marked pronation, extreme tenderness of plantar surfaces of the feet, marked inward displacement and severe spasm of the tendo achillis on manipulation, not improved by orthopedic shoes or appliances	
Bilateral	50
Unilateral	30
Severe; objective evidence of marked deformity (pronation, abduction, etc.), pain on manipulation and use accentuated, indication of swelling on use, characteristic callosities:	
Bilateral	30
Unilateral	20
Moderate; weight-bearing line over or medial to great toe, inward bowing of the tendo achillis, pain on manipulation and use of the feet, bilateral or unilateral	10
Mild; symptoms relieved by built-up shoe or arch support	0

THE FOOT—Continued

	Rating
5277 Weak foot, bilateral:	
A symptomatic condition secondary to many constitutional conditions, characterized by atrophy of the musculature, disturbed circulation, and weakness:	
Rate the underlying condition, minimum rating	10
5278 Claw foot (pes cavus), acquired:	
Marked contraction of plantar fascia with dropped forefoot, all toes hammer toes, very painful callosities, marked varus deformity:	
Bilateral	50
Unilateral	30
All toes tending to dorsiflexion, limitation of dorsiflexion at ankle to right angle, shortened plantar fascia, and marked tenderness under metatarsal heads:	
Bilateral	30
Unilateral	20
Great toe dorsiflexed, some limitation of dorsiflexion at ankle, definite tenderness under metatarsal heads:	
Bilateral	10
Unilateral	10
Slight	0
5279 Metatarsalgia, anterior (Morton's disease), unilateral, or bilateral	10
5280 Hallux valgus, unilateral:	
Operated with resection of metatarsal head	10
Severe, if equivalent to amputation of great toe	10
5281 Hallux rigidus, unilateral, severe:	
Rate as hallux valgus, severe.	
Note. Not to be combined with claw foot ratings.	
5282 Hammer toe:	
All toes, unilateral without claw foot	10
Single toes	0
5283 Tarsal, or metatarsal bones, malunion of, or nonunion of:	
Severe	30
Moderately severe	20
Moderate	10
NOTE. With actual loss of use of the foot, rate 40 percent.	
5284 Foot injuries, other:	
Severe	30
Moderately severe	20
Moderate	10
NOTE. With actual loss of use of the foot, rate 40 percent.	

THE SPINE

	Rating
5285 Vertebra, fracture of, residuals:	
With cord involvement, bedridden, or requiring long leg braces	100
Consider special monthly compensation; with lesser involvements rate for limited motion, nerve paralysis.	

THE SPINE—Continued

	Rating
Without cord involvement; abnormal mobility requiring neck brace (jury mast)	60
In other cases rate in accordance with definite limited motion or muscle spasm, adding 10 percent for demonstrable deformity of vertebral body.	
NOTE. Both under ankylosis and limited motion, ratings should not be assigned for more than one segment by reason of involvement of only the first or last vertebrae of an adjacent segment.	
5286 Spine, complete bony fixation (ankylosis) of:	
Unfavorable angle, with marked deformity and involvement of major joints (Marie-Strumpell type) or without other joint involvement (Bechterew type)	100
Favorable angle	60
5287 Spine, ankylosis of, cervical:	
Unfavorable	40
Favorable	30
5288 Spine, ankylosis of, dorsal:	
Unfavorable	30
Favorable	20
5289 Spine, ankylosis of, lumbar:	
Unfavorable	50
Favorable	40
5290 Spine, limitation of motion of, cervical:	
Severe	30
Moderate	20
Slight	10
5291 Spine, limitation of motion of, dorsal:	
Severe	10
Moderate	10
Slight	0
5292 Spine, limitation of motion of, lumbar:	
Severe	40
Moderate	20
Slight	10
5293 Intervertebral disc syndrome:	
Pronounced; with persistent symptoms compatible with sciatic neuropathy with characteristic pain and demonstrable muscle spasm, absent ankle jerk, or other neurological findings appropriate to site of diseased disc, little intermittent relief	60
Severe; recurring attacks, with intermittent relief	40
Moderate; recurring attacks	20
Mild	10
Postoperative, cured	0
5294 Sacro-iliac injury and weakness:	
5295 Lumbosacral strain:	
Severe; with listing of whole spine to opposite side, positive Goldthwaite's sign, marked limitation of forward bending in standing position, loss of lateral motion with osteo-arthritic changes, or narrowing or irregularity of joint space, or some of the above with abnormal mobility on forced motion	40
With muscle spasm on extreme forward bending, loss of lateral spine motion, unilateral, in standing position	20
With characteristic pain on motion	10
With slight subjective symptoms only	0

THE SKULL

	Rating
5296 Skull, loss of part of, both inner and outer tables:	
With brain hernia	80
Without brain hernia:	
Area larger than size of a 50-cent piece or 1.140 in² (7.355 cm²)	50
Area intermediate	30
Area smaller than the size of a 25-cent piece or 0.716 in² (4.619 cm²)	10
NOTE. Rate separately for intracranial complications.	

THE RIBS

	Rating
5297 Ribs, removal of:	
More than six	50
Five or six	40
Three or four	30
Two	20
One or resection of two or more ribs without regeneration	10
NOTE (1). The rating for rib resection or removal is not to be applied with ratings for purrulent pleurisy, lobectomy, pneumonectomy or injuries of pleural cavity.	
NOTE (2). However, rib resection will be considered as rib removal in thoracoplasty performed for collapse therapy or to accomplish obliteration of space and will be combined with the rating for lung collapse, or with the rating for lobectomy, pneumonectomy or the graduated ratings for pulmonary tuberculosis.	

THE COCCYX

	Rating
5298 Coccyx, removal of:	
Partial or complete, with painful residuals	10
Without painful residuals	0

[29 FR 6718, May 22, 1964, as amended at 34 FR 5062, Mar. 11, 1969; 40 FR 42536, Sept. 15, 1975; 41 FR 11294, Mar. 18, 1976; 43 FR 45350, Oct. 2, 1978]

§ 4.72 Rating muscle injuries.

In rating disability from injuries of the musculoskeletal system, attention is to be given first to the deeper structures injured, bones, joints, and nerves. A compound omminuted fracture, for example, with muscle damage from the missile, establishes severe muscle injury, and there may be additional disability from malunion of bone, ankylosis, etc. The location of foreign bodies may establish the extent of penetration and consequent damage. It may not be too readily assumed that only one muscle, or group of muscles is damaged. A through and through injury, with muscle damage, is always at least a moderate injury, for each group of muscles damaged. This section is to be taken as establishing entitlement to rating of severe grade when there is history of compound comminuted fracture and definite muscle or tendon damage from the missile. There are locations, as in the wrist or over the tibia, where muscle damage might be minimal or damage to tendons repaired by suture, and in such cases requirements for severe ratings are not necessarily met.

§ 4.73 Schedule of ratings—muscle injuries.

THE SHOULDER GIRDLE AND ARM

	Rating	
	Major	Minor
5301 Group I. Extrinsic muscles of shoulder girdle. (1) Trapezius; (2) levator scapulae; (3) serratus magnus. (Function: Upward rotation of scapula. Elevation of arm above shoulder level.)		
Severe	40	30
Moderately severe	30	20
Moderate	10	10
Slight	0	0
5302 Group II. Extrinsic muscles of shoulder girdle. (1) Pectoralis major II (costosternal); (2) latissimus dorsi and teres major; (3) pectoralis minor; (4) rhomboid. (Function: Depression of arm from vertical overhead to hanging at side, (1, 2); downward rotators of scapula, (3, 4); (teres major although technically an intrinsic muscle is included with latissimus dorsi); 1 and 2 act with Group III in forward and backward swing of the arm.)		
Severe	40	30
Moderately severe	30	20
Moderate	20	20
Slight	0	0
5303 Group III. Intrinsic muscles of shoulder girdle. (1) Pectoralis major I (clavicular); (2) deltoid. (Function: Elevation and abduction of arm to level of shoulder, act with 1 and 2 Group II in forward and backward swing of arm.)		
Severe	40	30
Moderately severe	30	20
Moderate	20	20
Slight	0	0

THE SHOULDER GIRDLE AND ARM—Continued

	Rating	
	Major	Minor
5304 Group IV. Intrinsic muscles of shoulder girdle. (1) Supraspinatus; (2) infraspinatus and teres minor; (3) subscapularis; (4) coracobrachialis. (Function: Stabilizing muscles of the shoulder against injury in strong movements, holding head of humerus in socket. Other functions are: (1) abduction, (2) outward rotation, (3) inward rotation.)		
Severe	30	20
Moderately severe	20	20
Moderate	10	10
Slight	0	0
5305 Group V. Flexor muscles of the elbow. (1) Biceps; (2) brachialis; (3) brachioradialis. (Function: Supination (1) long head of biceps or stabilizer of shoulder joint. Flexion of elbow, (1,2,3).)		
Severe	40	30
Moderately severe	30	20
Moderate	10	10
Slight	0	0
5306 Group VI. Extensor muscles of the elbow (long head of triceps is a stabilizer of shoulder joint). (1) Triceps; (2) anconeus.		
Severe	40	30
Moderately severe	30	20
Moderate	10	10
Slight	0	0

THE FOREARM AND HAND

	Rating	
	Major	Minor
5307 Group VII. Muscles arising from internal condyle of humerus. Flexors of the carpus and long flexors of fingers and thumb; pronator. (Function: Flexion of wrist and fingers.)		
Severe	40	30
Moderately severe	30	20
Moderate	10	10
Slight	0	0
5308 Group VIII. Muscles arising mainly from external condyle of humerus. Extensors of carpus, fingers and thumb; supinator. (Function: Extension of wrist, fingers and thumb; abduction of thumb.)		
Severe	30	20
Moderately severe	20	20
Moderate	10	10
Slight	0	0
5309 Group IX. Intrinsic muscles of the hand. Thenar eminence; short flexor, opponens, abductor and adductor of thumb; hypothenar eminence; short flexor opponens and abductor of little finger, 4 lumbricales; 4 dorsal and 3 palmar interossei. (Function: In general the forearm muscles act in strong grasping movements and are supplemented by the intrinsic muscles in delicate manipulative movements.)		

THE FOREARM AND HAND—Continued

	Rating	
	Major	Minor
NOTE. The hand is so compact a structure that isolated muscle injuries are rare, being nearly always complicated with injuries of bones, joints, tendons, etc.		
Rate on limitation of motion, minimum 10 percent.		

THE FOOT AND LEG

	Rating
5310 Group X. Intrinsic muscles of the foot. Plantar: (1) Flexor digitorum brevis; (2) abductor hallucis; (3) abductor digiti V; (4) quadratus plantae; (5) lumbricales (4); (6) flexor hallucis; (7) abductor hallucis; (8) flexor digiti V, brevis; (9) adductor digiti V, opponens digiti V; interossei plantar. (Function: Movements of the forefoot and toes. Propulsion thrust in walking.) Other important plantar structures: Plantar aponeurosis, long plantar and calcaneonavicular ligament, tendons of posterior tibial, peroneus longus, and long flexors of great and little toes.	
Severe	30
Moderately severe	20
Moderate	10
Slight	0
Dorsal: (1) Extensor hallucis brevis; (11) extensor digitorum brevis; (2) dorsal interossei (4). Other important dorsal structures: Cruciate crural, deltoid and other ligaments. Tendons of long extensors of toes and peronei muscles.	
Severe	20
Moderately severe	10
Moderate	10
Slight	0
NOTE. Minimum rating for through and through wounds of the foot	10
5311 Group XI. Posterior and lateral crural muscles. Muscles of the calf. (1) Triceps surae (gastrocnemius and soleus); (2) tibialis posterior; (3) peroneus longus; (4) flexor hallucis longus; (5) flexor digitorum longus; (6) popliteus. (Function: Propulsion, plantar flexion of foot (1); stabilizing arch (2, 3); flexion of toes (4, 5); flexion of knee (6).)	
Severe	30
Moderately severe	20
Moderate	10
Slight	0
5312 Group XII. Anterior muscles of the leg. (1) Tibialis anterior; (2) long extensors of toes; (3) peroneus tertius. (Function: Dorsiflexion (1), extension of toes (2), stabilizing arch (3).)	
Severe	30
Moderately severe	20
Moderate	10
Slight	0

THE PELVIC GIRDLE AND THIGH

	Rating
5313 Group XIII. Posterior thigh group. Hamstring complex of 2-joint muscles. (1) Biceps femoris; (2) semimembranosus; (3) semitendinosus. (Function: Extension of hip and flexion of knee. Outward and inward rotation of flexed knee. Acting with rectus femoris and sartorius (see XIV, 1, 2) synchronizing simultaneous flexion of hip and knee and extension of hip and knee by belt-over-pulley action at knee joint.)	
Severe	40
Moderately severe	30
Moderate	10
Slight	0
5314 Group XIV. Anterior thigh group. (1) Sartorius; (2) rectus femoris; (3) vastus externus; (4) vastus intermedius; (5) vastus internus; (6) tensor vaginae femoris. (Function: Extension of knee (2, 3, 4, 5) simultaneous flexion of hip and flexion of knee (1), tension of fascia lata and iliotibial (Maissiat's) band, acting with XVII, 1, in postural support of body (6), acting with hamstrings in synchronizing hip and knee (1, 2).)	
Severe	40
Moderately severe	30
Moderate	10
Slight	0
5315 Group XV Mesial thigh group. (1) Adductor longus; (2) adductor brevis; (3) adductor magnus; (4) gracilis. (Function: Adduction of the hip (1, 2, 3, 4), flexion of hip (1, 2); flexion of knee (4).)	
Severe	30
Moderately severe	20
Moderate	10
Slight	0
5316 Group XVI. Pelvic girdle group 1. (1) Psoas; (2) iliacus; (3) pectineus. (Function: Flexion of hip (1, 2, 3).)	
Severe	40
Moderately severe	30
Moderate	10
Slight	0
5317 Group XVII. Pelvic girdle group 2. (1) Gluteus maximus; (2) gluteus medius; (3) gluteus minimus. (Function: Extension of hip (1), abduction of thigh, elevation of opposite side of pelvis (2, 3), tension of fascia lata and iliotibial (Maissiat's band, acting with XIV, 6, in postural support of body steadying pelvis upon head of femur and condyles of femur on tibia (1).)	
Severe	*50
Moderately severe	40
Moderate	20
Slight	0
5318 Group XVIII. Pelvic girdle group 3. (1) Pyriformis; (2) gemellus (sup. or inf.); (3) obturator (ext. or int.); (4) quadratus femoris. (Function: Outward rotators of the thigh and stabilizers of the hip joint.)	
Severe	30
Moderately severe	20
Moderate	10
Slight	0

THE TORSO AND NECK

	Rating
5319 Group XIX. Muscles of the abdominal wall. (1) Rectus abdominis; (2) external oblique; (3) internal oblique; (4) transversalis; (5) quadratus lumborum. (Function: Support and compression of abdominal wall and lower thorax. Flexion and lateral motions of spine. Synergists in strong downward movements of arm (1).)	
Severe	50
Moderately severe	30
Moderate	10
Slight	0
5320 Group XX. Spinal muscles. Sacrospinalis (erector spinae and its prolongations in thoracic and cervical regions). (Function: Postural support of body. Extension and lateral movements of spine.)	
Cervical and dorsal region:	
Severe	40
Moderately severe	20
Moderate	10
Slight	0
Lumbar region:	
Severe	60
Moderately severe	40
Moderate	20
Slight	0
5321 Group XXI. Muscles of respiration. Thoracic muscle group:	
Moderately severe or severe	20
Moderate	10
Slight	0
5322 Group XXII. Lateral, supra and infrahyoid group. Muscles of the front of the neck. (1) Trapezius I (clavicular insertion); (2) sternocleidomastoid; (3) the "hyoid" muscles; (4) sternothyroid; (5) digastric. (Function: Rotary and forward movements of the head; respiration; deglutition.)	
Severe	30
Moderately severe	20
Moderate	10
Slight	0
5323 Group XXIII. Lateral and posterior muscles of the neck. Suboccipital; lateral vertebral and anterior vertebral muscles. (Function: Movements of head; fixators for shoulder movements.)	
Severe	30
Moderately severe	20
Moderate	10
Slight	0
5324 Diaphragm, rupture of, with herniation. Rate under diagnostic code 7346.	
5325 Muscle injury, facial muscles:	
Consider injury to cranial nerves, minimum rating if interfering to any extent with mastication	10
5326 Muscle hernia, extensive, without other injury to the muscle	10
5327 Muscle, new growth of, malignant	100
NOTE. The 100 percent rating will be continued for 1 year following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.	
5328 Muscle, new growth, benign, postoperative: Rate on basis of impairment of function, i.e., limitation of motion, or scars, diagnostic code 7805, etc	10

[4] If bilateral, see § 4.64 for consideration of special monthly compensation for loss of use of buttocks.

[29 FR 6718, May 22, 1964, as amended at 41 FR 11296, Mar. 18, 1976; 43 FR 45352, Oct. 2, 1978]

The Organs of Special Sense

§ 4.75 Examination of visual acuity.

Ratings on account of visual impairments considered for service connection are, when practicable, to be based only on examination by specialists. Such special examinations should include uncorrected and corrected central visual acuity for distance and near, with record of the refraction. Snellen's test type or its equivalent will be used. Mydriatics should be routine, except when contraindicated. Funduscopic and ophthalmological findings must be recorded. The best distant vision obtainable after best correction by glasses will be the basis of rating, except in cases of keratoconus in which contact lenses are medically required. Also, if there exists a difference of more than 4 diopters of spherical correction between the two eyes, the best possible visual acuity of the poorer eye without glasses, or with a lens of not more than 4 diopters difference from that used with the better eye will be taken as the visual acuity of the poorer eye. When such a difference exists, close attention will be given to the likelihood of congenital origin in mere refractive error.

[40 FR 42537, Sept. 15, 1975]

§ 4.76 Examination of field vision.

Measurement of the visual field will be made when there is disease of the optic nerve or when otherwise indicated. The usual perimetric methods will be employed, using a standard perimeter and 3 mm. white test object. At least 16 meridians 22½ degrees apart will be charted for each eye. (See Figure 1. For the 8 principal meridians, see Table III.) The charts will be made a part of the report of examination. Not less than 2 recordings, and when possible, 3 will be made. The minimum limit for this function is established as a concentric central contraction of the visual field to 5°. This type of contraction of the visual field reduces the visual efficiency to zero. Where available the examination for form field should be supplemented, when indicated, by the use of target screen or campimeter. This last test is especially valuable in detection of scotoma.

[43 FR 45352, Oct. 2, 1978]

§ 4.76a Computation of average concentric contraction of visual fields.

The extent of contraction of visual field in each eye is determined by recording the extent of the remaining visual fields in each of the eight 45 degree principal meridians. The number of degrees lost is determined at each meridian by subtracting the remaining degrees from the normal visual fields given in Table III. The degrees lost are then added together to determine total degrees lost. This is subtracted from 500. The difference represents the total remaining degrees of visual field. The difference divided by eight represents the average contraction for rating purposes.

TABLE III—NORMAL VISUAL FIELD EXTENT AT 8 PRINCIPAL MERIDIANS

Meridian	Normal degrees
Temporally	85
Down temporally	85
Down	65
Down nasally	50
Nasally	60
Up nasally	55
Up	45
Up temporally	55
Total	500

80-118 O—82——22

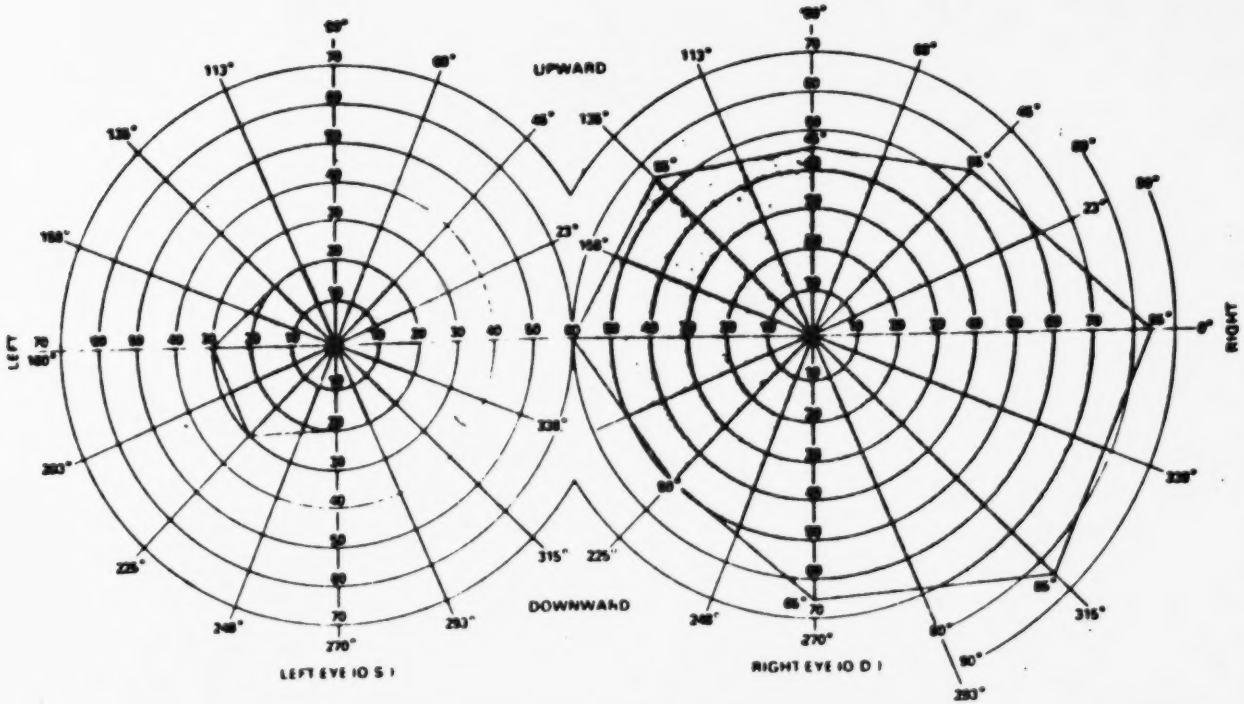


Figure 1 Chart of visual field showing normal field right eye and abnormal contraction visual field left eye.

Example of computation of concentric contraction under the schedule with abnormal findings taken from Figure 1.

Loss	Degrees
Temporally	55
Down temporally	55
Down	45
Down nasally	30
Nasally	40
Up nasally	35
Up	25
Up temporally	55
Total loss	20

Remaining field 500° minus 320° = 180°. 180° ÷ 8 = 22½° average concentric contraction.

[43 FR 45352, Oct. 2, 1978]

§ 4.77 Examination of muscle function.

(a) The measurement of muscle function will be undertaken only when the history and findings reflect disease or injury of the extrinsic muscles of the eye, or of the motor nerves supplying these muscles. The measurement will be performed using an industrial motor field chart, as in Figure 2, the dimensions of the individual rectangles being 8⅜ inches (21.3 cms.) by 10½ inches (26.7 cms.) for use at 10 feet (3.0 m.).

(b) The claimant will face the chart directly, fixating upon the central point, and without moving the head, successively turn the eyes to the individual rectangles, as the examiner moves a test object which should be a self-illuminated white dot of about 3 mm. in diameter attached to a wand from rectangle to rectangle, reporting whether he or she sees it singly or doubly. Repetition of the test will be made under the close supervision of the examiner. Impairment of muscle function is to be supported in each instance by record of actual appropriate pathology. Diplopia which is only occasional or correctable is not considered a disability.

[43 FR 45354, Oct. 2, 1978]

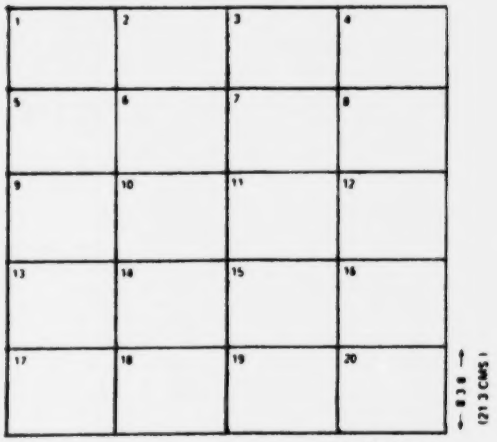


FIGURE 2 MOTOR FIELD CHART

§ 4.78 Computing aggravation.

In determining the effect of aggravation of visual disability, even though the visual impairment of only one eye is service connected, evaluate the vision of both eyes, before and after suffering the aggravation, and subtract the former evaluation from the latter except when the bilateral vision amounts to total disability. In the event of subsequent increase in the disability of either eye, due to intercurrent disease or injury not associated with the service, the condition of the eyes before suffering the subsequent increase will be taken as the basis of compensation subject to the provisions of § 3.383(a) of this chapter.

[29 FR 6718, May 22, 1964, as amended at 43 FR 45354, Oct. 2, 1978]

§ 4.79 Loss of use of one eye, having only light perception.

Loss of use or blindness of one eye, having only light perception, will be held to exist when there is inability to recognize test letters at 1 foot (.30m.) and when further examination of the eyes reveals that perception of objects, hand movements or counting fingers cannot be accomplished at 3 feet (.91m.), lesser extents of visions, particularly perception of objects, hand movements, or counting fingers at distances less than 3 feet (.91 m.), being

considered of negligible utility. With visual acuity 5/200 (1.5/60) or less or the visual field reduced to 5° concentric contraction, in either event in both eyes, the question of entitlement on account of regular aid and attendance will be determined on the facts in the individual case.

[43 FR 45354, Oct. 2, 1978]

§ 4.80 Rating of one eye.

Combined ratings for disabilities of the same eye should not exceed the amount for total loss of vision of that eye unless there is an enucleation or a serious cosmetic defect added to the total loss of vision.

§ 4.81—4.82 [Reserved]

§ 4.83 Ratings at scheduled steps and distances.

In applying the ratings for impairment of visual acuity, a person not having the ability to read at any one of the scheduled steps or distances, but reading at the next scheduled step or distance, is to be rated as reading at this latter step or distance. That is, a person who can read at 20/100 (6/30) but who cannot at 20/70 (6/21), should be rated as seeing at 20/100 (6/30).

[41 FR 34257, Aug. 13, 1976, as amended at 43 FR 45354, Oct. 2, 1978]

§ 4.83a Impairment of central visual acuity.

The percentage evaluation will be found from table V by intersecting the horizontal row appropriate for the Snellen index for one eye and the vertical column appropriate to the Snellen index of the other eye. For example, if one eye has a Snellen index of 5/200 (1.5/60) and the other eye has a Snellen index of 20/70 (6/21), the percentage evaluation is found in the third horizontal row from the bottom and the fourth vertical column from the left. The evaluation is 50 percent and the diagnostic code 6073.

[41 FR 11297, Mar. 18, 1976, as amended at 43 FR 45354, Oct. 2, 1978]

§ 4.84 Differences between distant and near visual acuity.

Where there is a substantial difference between the near and distant corrected vision, the case should be referred to the Director, Compensation and Pension Service.

[40 FR 42537, Sept. 15, 1975]

§ 4.84a Schedule of ratings—eye.

DISEASES OF THE EYE

	Rating
6000 Uveitis	
6001 Keratitis	
6002 Scleritis	
6003 Iritis	
6004 Cyclitis	
6005 Choroiditis	
6006 Retinitis	
6007 Hemorrhage, intra-ocular, recent	
6008 Retina, detachment of	
6009 Eye, injury of, unhealed:	
The above disabilities, in chronic form, are to be rated from 10 percent to 100 percent for impairment of visual acuity or field loss, pain, rest-requirements, or episodic incapacity, combining an additional rating of 10 percent during continuance of active pathology. Minimum rating during active pathology	10
6010 Eye, tuberculosis of, active or inactive:	
Active	100
Inactive: See §§ 4.88b and 4.89.	
6011 Retina, localized scars, atrophy, or irregularities of, centrally located, with irregular, duplicated enlarged or diminished image:	
Unilateral or bilateral	10
6012 Glaucoma, congestive or inflammatory:	
Frequent attacks of considerable duration; during continuance of actual total disability	100
Or, rate as iritis, diagnostic Code 6003.	
6013 Glaucoma, simple, primary, noncongestive:	
Rate on impairment of visual acuity or field loss. Minimum rating	10
6014 New growths, malignant (eyeball only):	
Pending completion of operation or other indicated treatment	100
Healed; rate on residuals.	
6015 New growths, benign (eyeball and adnexa, other than superficial)	
Rate on impaired vision, minimum	10
Healed; rate on residuals.	
6016 Nystagmus, central	10
6017 Conjunctivitis, trachomatous, chronic:	
Active; rate for impairment of visual acuity; minimum rating while there is active pathology	30
Healed; rate on residuals, if no residuals	0
6018 Conjunctivitis, other, chronic:	
Active, with objective symptoms	10
Healed; rate on residuals, if no residuals	0
6019 Ptosis, unilateral or bilateral:	
Pupil wholly obscured.	
Rate equivalent to 5/200 (1.5/60).	
Pupile one-half or more obscured.	
Rate equivalent to 20/100 (6/30).	
With less interference with vision.	
Rate as disfigurement.	

DISEASES OF THE EYE—Continued

	Rating
6020 Ectropion:	
Bilateral	20
Unilateral	10
6021 Entropion:	
Bilateral	20
Unilateral	10
6022 Lagophthalmos:	
Bilateral	20
Unilateral	10
6023 Eyebrows, loss of, complete, unilateral or bilateral	10
6024 Eyelashes, loss of, complete, unilateral or bilateral	10
6025 Epiphora (lacrymal duct, interference with, from any cause):	
Bilateral	20
Unilateral	10
6026 Neuritis, optic:	
Rate underlying disease, and combine impairment of visual acuity or field loss.	
6027 Cataract, traumatic:	
Preoperative.	
Rate on impairment of vision.	
Postoperative.	
Rate on impairment of vision and aphakia.	
6028 Cataract, senile, and others:	
Preoperative.	
Rate on impairment of vision.	
Postoperative.	
Rate on impairment of vision and aphakia.	
6029 Aphakia:	
Bilateral or unilateral	30

DISEASES OF THE EYE—Continued

	Rating
NOTE. The 30 percent rating prescribed for aphakia is a minimum rating to be applied to the unilateral or bilateral condition and is not to be combined with any other rating for impaired vision. When only one eye is aphakic, the eye having poorer corrected visual acuity will be rated on the basis of its acuity without correction. When both eyes are aphakic, both will be rated on corrected vision. The corrected vision of one or both aphakic eyes will be taken one step worse than the ascertained value, however, not better than 20/70 (6/21). Combined ratings for disabilities of the same eye should not exceed the amount for total loss of vision of that eye unless there is an enucleation or a serious cosmetic defect added to the total loss of vision.	
6030 Accommodation, paralysis of	20
6031 Dacryocystitis	
Rate as epiphora.	
6032 Eyelids, loss of portion of:	
Rate as disfigurement. (See diseases of the skin.)	
6033 Lens, crystalline, dislocation of:	
Rate as aphakia.	
6034 Pterygium:	
Rate for loss of vision, if any.	
6035 Keratoconus: To be evaluated on impairment of corrected visual acuity using contact lenses.	
NOTE. When contact lenses are medically required for keratoconus, either unilateral or bilateral, the minimum rating will be 30 percent.	

TABLE IV—TABLE FOR RATING BILATERAL BLINDNESS WITH DICTATOR'S RATING CODE AND VA REGULATION

Vision one eye	Vision other eye						
	5/200 [(1.5/60)] or less	Light perception only	No light perception plus phthisis bulbi	No light perception plus deformity	No light perception plus disfigurement	No light perceptions plus evisceration	Anatomical loss
5/200 [(1.5/60)] or less	L[1] Code [LB-1] 1350 (B)(2) [(38 CFR 3.350 (b)(2))]	L+½[1] Code [LB-2] 1350 (F)(2)(a) [(38 CFR 3.350 (f)(2)(i))]	M Code [MB-2-b-(1)] 1350 (F)(2)(b) [(38 CFR 3.350 (f)(2)(ii))]	M Code [MB-2-b-(3)] 1350 (F)(2)(b) [(38 CFR 3.350 (f)(2)(ii))]	M Code [MB-2-b-(4)] 1350 (F)(2)(b) [(38 CFR 3.350 (f)(2)(ii))]	M Code [MB-2-b-(2)] 1350 (F)(2)(b) [(38 CFR 3.350 (f)(2)(ii))]	M Code [MB-2-(a)] 1350 (F)(2)(b) [(38 CFR 3.350 (f)(2)(ii))]
Light perception only		M Code [MB-1-a] 1350 (C) [(38 CFR 3.350 (c))]	M+½ Code [MB-3-b-(1)] 1350 (F)(2)(c) [(38 CFR 3.350 (f)(2)(iii))]	M+½ Code [MB-3-b-(3)] 1350 (F)(2)(c) [(38 CFR 3.350 (f)(2)(iii))]	M+½ Code [MB-3-b-(4)] 1350 (F)(2)(c) [(38 CFR 3.350 (f)(2)(iii))]	M+½ Code [MB-3-b-(2)] 1350 (F)(2)(c) [(38 CFR 3.350 (f)(2)(iii))]	M+½ Code [MB-3-a] 1350 (F)(2)(c) [(38 CFR 3.350 (f)(2)(iii))]

TABLE IV—TABLE FOR RATING BILATERAL BLINDNESS WITH DICTATOR'S RATING CODE AND VA REGULATION—Continued

Vision one eye	Vision other eye						
	5/200 [(1.5/60)] or less	Light perception only	No light perception plus phthisis bulbi	No light perception plus deformity	No light perception plus disfigurement	No light perceptions plus evisceration	Anatomical loss
No light perception plus phthisis bulbi			N Code [NB-2-a] 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]	N Code [NB-2-a&c] 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]	N Code [NB-2-a&d] 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]	N Code [NB-2-a&b] 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]	N See note 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv)
No light perception plus deformity				N Code [NB-2-c] 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]	N Code [NB-2/c&d] 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]	N Code [NB-2-b&c] 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]	N See Note 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]
No light perception plus disfigurement					N Code [NB-2-d] 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]	N Code [NB-2-b&d] 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]	N See Note 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]
No light perception plus evisceration						N Code [NB-2-d] 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]	N See Note 1350 (F)(2)(d) [(38 CFR 3.350 (f)(2)(iv))]
Anatomical loss							N Code NB-1 1350 (D) [(38 CFR 3.350 (d))]

BILATERAL BLINDNESS WITH DEAFNESS

Any of the above plus service connected total deafness one ear add ½ rate (limit O) code 322— § 3.350(f)(2)(v)(a).
Any of the above plus bilateral deafness, 40% or more, at least one ear service connected add full step (Limit O) code 323— § 3.350(f)(2)(v)(*b*).
Any of the above plus service connected deafness, 60% or more, at least one ear service connected qualifies for Subpar O Code 231— § 3.350(e).

[1] With need for aid and attendant qualifies for Subpar M code 211—§ 3.350(c).

NOTE: No specific dictators rating code provided, code 305 through code 308 should be modified to fit the condition shown.

IMPAIRMENT OF CENTRAL VISUAL ACUITY

	Rating
6061 Anatomical loss both eyes	[5] 100
6062 Blindness in both eyes having only light perception	[5] 100
Anatomical loss of 1 eye:	
6063 In the other eye 5/200 (1.5/60)	[5] 100
6064 In the other eye 10/200 (3/60)	[5] 90
6064 In the other eye 15/200 (4.5/60)	[5] 80
6064 In the other eye 20/200 (6/60)	[5] 70
6065 In the other eye 20/100 (6/30)	[5] 60
6065 In the other eye 20/70 (6/21)	[5] 60
6065 In the other eye 20/50 (6/15)	[5] 50

IMPAIRMENT OF CENTRAL VISUAL ACUITY—Continued

	Rating
6066 In the other eye 20/40 (6/12)	[5] 40
Blindness in 1 eye, having only light perception:	
6067 In the other eye 5/200 (1.5/60)	[5] 100
6068 In the other eye 10/200 (3/60)	[5] 90
6068 In the other eye 15/200 (4.5/60)	[5] 80
6068 In the other eye 20/200 (6/60)	[5] 70
6069 In the other eye 20/100 (6/30)	[5] 60
6069 In the other eye 20/70 (6/21)	[5] 50
6069 In the other eye 20/50 (6/15)	[5] 40

IMPAIRMENT OF CENTRAL VISUAL ACUITY—Continued

	Rating
6070 In the other eye 20/40 (6/12)	[5]30
Vision in 1 eye 5/200 (1.5/60):	
6071 In the other eye 5/200 (1.5/60)	[5]100
6072 In the other eye 10/200 (3/60)	90
6072 In the other eye 15/200 (4.5/60)	80
6072 In the other eye 20/200 (6/60)	70
6073 In the other eye 20/100 (6/30)	60
6073 In the other eye 20/70 (6/21)	50
6073 In the other eye 20/50 (6/15)	40
6074 In the other eye 20/40 (6/12)	30
Vision in 1 eye 10/200 (3/60):	
6075 In the other eye 10/200 (3/60)	90
6075 In the other eye 15/200 (4.5/60)	80
6075 In the other eye 20/200 (6/60)	70
6076 In the other eye 20/100 (6/30)	60
6076 In the other eye 20/70 (6/21)	50
6076 In the other eye 20/50 (6/15)	40
6077 In the other eye 20/40 (6/12)	30
Vision in 1 eye 15/200 (4.5/60):	
6075 In the other eye 15/200 (4.5/60)	80
6075 In the other eye 20/200 (6/60)	70
6076 In the other eye 20/100 (6/30)	60
6076 In the other eye 20/70 (6/21)	40
6076 In the other eye 20/50 (6/15)	30

IMPAIRMENT OF CENTRAL VISUAL ACUITY—Continued

	Rating
6077 In the other eye 20/40 (6/12)	20
Vision in 1 eye 20/200 (6/60):	
6075 In the other eye 20/200 (6/60)	70
6076 In the other eye 20/100 (6/30)	60
6076 In the other eye 20/70 (6/21)	40
6076 In the other eye 20/50 (6/15)	30
6077 In the other eye 20/40 (6/12)	20
Vision in 1 eye 20/100 (6/30):	
6078 In the other eye 20/100 (6/30)	50
6078 In the other eye 20/70 (6/21)	30
6078 In the other eye 20/50 (6/15)	20
6079 In the other eye 20/40 (6/12)	10
Vision in 1 eye 20/70 (6/21):	
6078 In the other eye 20/70 (6/21)	30
6078 In the other eye 20/50 (6/15)	20
6079 In the other eye 20/40 (6/12)	10
Vision in 1 eye 20/50 (6/15):	
6078 In the other eye 20/50 (6/15)	10
6079 In the other eye 20/40 (6/12)	10
Vision in 1 eye 20/40 (6/12):	
In the other eye 20/40 (6/12).	

[5] Also entitled to special monthly compensation.
[6] Add 10% if artificial eye cannot be worn; also entitled to special monthly compensation.

TABLE V—RATINGS FOR CENTRAL VISUAL ACUITY IMPAIRMENT

[With Diagnostic Code]

Vision in one eye	Vision in other eye								
	20/40	20/50	20/70	20/100	20/200	15/200	10/200	5/200	Light perception only/ anatomical loss
20/40	0								
20/50	10 (6079)	10 (6078)							
20/70	10 (6079)	20 (6078)	(6078)						
20/100	10 (6079)	20 (6078)	30 (6078)	50 (6078)					
20/200	20 (6077)	30 (6076)	40 (6076)	60 (6076)	70 (6075)				
15/200	20 (6077)	30 (6076)	40 (6076)	60 (6076)	70 (6075)	80 (6075)			
10/200	30 (6077)	40 (6076)	50 (6076)	60 (6076)	70 (6075)	80 (6075)	90 (6075)		
5/200	30 (6074)	40 (6073)	50 (6073)	60 (6073)	70 (6072)	80 (6072)	90 (6072)	[5]100 (6071)	
Light perception only	[5]30 (6070)	[5]40 (6069)	[5]50 (6069)	[5]60 (6069)	[5]70 (6068)	[5]80 (6068)	[5]90 (6068)	[5]100 (6067)	[5]100 (6062)
Anatomical loss of one eye	[6]40 (6066)	[6]50 (6065)	[6]60 (6065)	[6]60 (6065)	[6]70 (6064)	[6]80 (6064)	[6]90 (6064)	[5]100 (6063)	[5]100 (6061)

[5] Also entitled to special monthly compensation.
[6] Add 10 percent if artificial eye cannot be worn; also entitled to special monthly compensation.

RATINGS FOR IMPAIRMENT OF FIELD VISION

	Rating
6080 Field vision, impairment of:	
Homonymous hemianopsia	30
Field, visual, loss of temporal half:	
Bilateral	30
Unilateral	10
Or rate as 20/70 (6/21).	
Field, visual, loss of nasal half:	
Bilateral	20
Unilateral	10
Or rate as 20/50 (6/15).	
Field, visual, concentric contraction of:	
To 5°:	
Bilateral	100
Unilateral	30
Or rate as 5/200 (1.5/60).	
To 15° but not to 5°:	
Bilateral	70
Unilateral	20
Or rate as 20/200 (6/60).	
To 30° but not to 15°:	
Bilateral	50
Unilateral	10
Or rate as 20/100 (6/30).	
To 45° but not to 30°:	
Bilateral	30
Unilateral	10
Or rate as 20/70 (6/21):	
To 60° but not to 45°:	
Bilateral	20
Unilateral	10
Or rate as 20/50 (6/15).	
NOTE (1). Correct diagnosis reflecting disease or injury should be cited.	
NOTE (2). Demonstrable pathology commensurate with the functional loss will be required. The concentric contraction ratings require contraction within the stated degrees, temporally; the nasal contraction may be less. The alternative ratings are to be employed when there is ratable defect of visual acuity, or a different impairment of the visual field in the other eye. Concentric contraction resulting from demonstrable pathology to 5 degrees or less will be considered on a parity with reduction of central visual acuity to 5/200 (1.5/60) or less for all purposes including entitlement under § 3.350(b)(2) of this chapter; not however, for the purpose of § 3.350(a) of this chapter. Entitlement on account of blindness requiring regular aid and attendance, § 3.350(c) of this chapter, will continue to be determined on the facts in the individual case.	
6081 Scotoma, pathological, unilateral:	
Large or centrally located, minimum	10
NOTE. Rate on loss of central visual acuity or impairment of field vision. Do not combine with any other rating for visual impairment.	

RATINGS FOR IMPAIRMENT OF MUSCLE FUNCTION

	Rating
6090 Muscle function, ocular, impairment of:	
Producing diplopia in 19–20 rectangles	
Rate as 5/200 (1.5/60).	
Producing diplopia in 17–18 rectangles	
Rate as 10/200 (3/60).	
Producing diplopia in 14–16 rectangles	
Rate as 15/200 (4.5/60).	
Producing diplopia in 12–13 rectangles	
Rate as 20/200 (6/60).	
Producing diplopia in 9–11 rectangles	
Rate as 20/100 (6/30).	
Producing diplopia in 6–8 rectangles	
Rate as 20/70 (6/21).	
Producing diplopia in 3–5 rectangles	
Rate as 20/50 (6/15).	
Producing diplopia in 0–2 rectangles	
Rate as 20/40 (6/12).	
NOTE (1). Correct diagnosis reflecting disease or injury should be cited.	
NOTE (2). The ratings under diagnostic code 6090 are to be applied only to the poorer eye if both have ratable impairment of visual acuity or visual field; if only one eye has a ratable impairment, to that eye, but not in combination with any other eye rating.	
6091 Symblepharon.	
Rate as limited muscle function, diagnostic Code 6090.	
6092 Diplopia, due to limited muscle function.	
Rate as diagnostic Code 6090.	

[29 FR 6718, May 22, 1964, as amended at 34 FR 5062, Mar. 11, 1969; 40 FR 42537, Sept. 15, 1975; 41 FR 11297, Mar. 18, 1976; 43 FR 45354, Oct. 2, 1978]

§ 4.84b Schedule of ratings—ear.

DISEASES OF THE EAR

	Rating
6200 Otitis media, suppurative, chronic:	
During the continuance of the suppurative process	10
NOTE. To be combined with ratings for loss of hearing.	
6201 Otitis media, catarrhal, chronic:	
Rate loss of hearing.	
6202 Otosclerosis:	
Rate loss of hearing.	
6203 Otitis interna:	
Rate loss of hearing.	
6204 Labyrinthitis, chronic:	
Severe; tinnitus, dizziness and occasional staggering	30
Moderate; tinnitus, occasional dizziness	10
NOTE. To be combined with ratings for loss of hearing or suppuration.	
6205 Meniere's syndrome:	
Severe; with frequent and typical attacks, vertigo, deafness, and cerebellar gait	100
Moderate; with less frequent attacks, including cerebellar gait	60
Mild; with aural vertigo and deafness	30

DISEASES OF THE EAR—Continued

	Rating
6206 Mastoiditis:	
Chronic; rate for impairment of hearing and suppuration.	
6207 Auricle:	
Loss of:	
Bilateral	50
Unilateral	30
Deformity of, with loss of one-third or more of the substance	10
6208 New growths, malignant, ear, other than of skin only:	
Rate on impairment of function, plus 10 percent.	
6209 New growths, benign, ear, other than of skin only:	
Rate on impairment of function; minimum	10
6210 Auditory canal, disease of:	
With swelling, dry and scaly or serious discharge, itching, requiring frequent and prolonged treatment	10
6211 Tympanic membrane, perforation of	0
6260 Tinnitus:	
Persistent as a symptom of head injury, concussion or acoustic trauma	10
(See diagnostic code 8046).	

[29 FR 6718, May 22, 1964, as amended at 41 FR 11298, Mar. 18, 1976]

IMPAIRMENT OF AUDITORY ACUITY

§ 4.85 Hearing impairments reported as a result of regional office or authorized audiology clinic examinations.

(a) If the results of controlled speech reception tests are used, the letter, A through F, designating the impairment in efficiency of each ear separately, will be ascertained from table VI. Table VI indicates six areas of impairment in efficiency. The literal designation of impaired efficiency (A, B, C, D, E, or F) will be determined by intersecting the horizontal row appropriate for percentage of discrimination and the vertical column appropriate to the speech reception decibel loss; thus, with a speech reception decibel loss of 62 db and a percentage discrimination of 72 percent the literal designation is "D"; if the speech reception decibel loss is 62 db and the percentage discrimination is 70 percent, the literal designation is "E".

(b) The percentage evaluation will be found from table VII by intersecting the horizontal row appropriate for the literal designation for the ear having the better hearing and the vertical column appropriate to the literal designation for the ear having the poorer hearing. For example, if the better ear has a literal designation of "B" and the poorer ear has a literal designation of "C", the percentage evaluation is in the second horizontal row from the bottom and in the third vertical column from the right and is 10 percent and the diagnostic code is 6293.

(c) If the results of pure tone audiometry are used, the equivalent literal designation for each ear, separately, will be ascertained from table VII, and the percentage evaluation determined in the same manner as for speech reception impairment in paragraph (b) of this section. For example, if the average pure tone decibel loss for the frequencies 500, 1,000 and 2,000 is not more than 57 db and there is no loss more than 70 db for any of these three frequencies, the equivalent literal designation is "C"; if in the other ear, the average is not more than 79 db, and there is no loss more than 90 db, the equivalent literal designation is "D". The percentage evaluation is therefore found in the horizontal row opposite "C", and in the vertical column under "D", and is 20 percent and the diagnostic code is 6289. Note that if in the first instance any of the 3 frequencies has a loss of more than 70 db, or in the second instance more than 90 db, the literal designation will be higher, i.e., further from "A" in the alphabetical series.

[43 FR 45358, Oct. 2, 1978]

§ 4.86 Hearing aids.

The evaluations derived from this schedule are intended to make proper allowance for improvement by hearing aids. Examination to determine this improvement is therefore unnecessary.

§ 4.86a Conversational voice in feet.

The column and row containing entries in feet (meters) will not be used for the purpose of determining service-connection or evaluation except in the rating of those unusual cases where no other data are available. In those cases showing no loss by spoken voice on induction but showing loss by spoken voice on discharge, evaluation will be deferred pending examination by controlled speech and pure tone appara-

tus. In those cases showing loss for spoken voice on induction, the footage (metric) equivalents on table VII will be used to determine the extent of hearing loss at induction for comparison with the results of examination by controlled speech and pure tone.

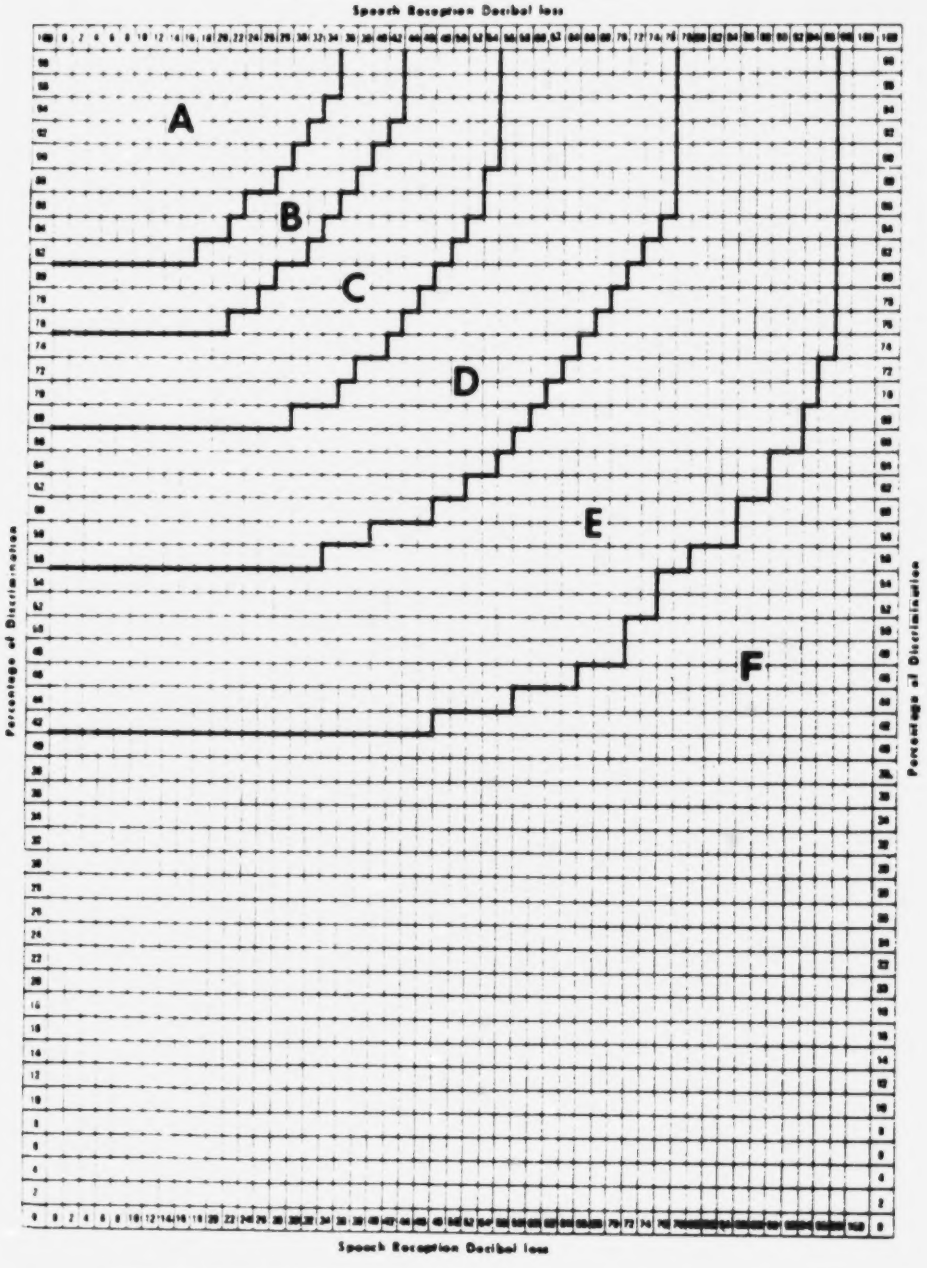
[41 FR 11298, Mar. 18, 1976, as amended at 43 FR 45358, Oct. 2, 1978]

§ 4.87 Determinations of auditory acuity.

By impairment of auditory acuity is meant the organic hearing loss for speech.

TABLE VI

Literal Designation of Hearing Impairment



(This chart showing the literal designation of hearing loss is based on the ANSI norm.)

TABLE VII—RATINGS FOR HEARING IMPAIRMENT (WITH DIAGNOSTIC CODE)

Hearing in better ear			Hearing in poorer ear					
Conversational	Pure tone audiometry average decibel loss at 3 frequencies; 500, 1,000 and 2,000	Speech reception impairment literal designation	0 ft; [1] Average 100 or more [2]—F [3]	1 to 4 ft; [1] Average not more than 99; none more than 105 [2]—E [3]	5 to 7 ft; [1] Average not more than 79; none more than 90 [2]—D [3]	8 to 9 ft; [1] Average not more than 57; none more than 70 [2]—C [3]	10 to 14 ft; [1] Average not more than 45; none more than 55 [2]—B [3]	15 to 40 ft; [1] Average not more than 37; none more than 45 [2]—A [3]
0 ft (0 m)	Average 100 or more	F	[4] 80 (6277)	.....	.....	.....	.....	.....
1 to 4 ft (0.3 to 1.2 m)	Average not more than 99; none more than 105.	E	60 (6278)	60 (6283)	.....	.....	.....	.....
5 to 7 ft (1.5 to 2.1 m)	Average not more than 79; none more than 90.	D	40 (6279)	40 (6284)	40 (6288)	.....	.....	.....
8 to 9 ft (2.4 to 2.7 m)	Average not more than 57; none more than 70.	C	30 (6280)	30 6285)	20 (6289)	20 (6292)	.....	.....
10 to 14 ft (3.0 to 4.3 m)	Average not more than 45; none more than 55.	B	20 (6281)	20 (6286)	20 (6290)	10 (6293)	10 (6295)	.....
15 to 40 ft (4.6 to 12.2 m).	Average not more than 37; none more than 45.	A	10 (6282)	10 (6287)	10 (6291)	0 (6294)	0 (6296)	0 (6297)

[1] Conversational voice in feet
[2] Pure tone audiometry decibel loss
[3] Speech reception impairment literal designation
[4] Entitled to special monthly compensation.

This chart is based upon ISO (ANSI) norm.

[41 FR 11298, Mar. 18, 1976, as amended at 41 FR 34257, Aug. 13, 1976; 43 FR 45358, Oct. 2, 1978]

§ 4.87a Diagnostic codes and literal designations.

	Rating
6277 Rated Column F, One Ear Row F, Other Ear Table VII	[7] 80
6278 Rated Column F, One Ear Row E, Other Ear Table VII	60
6279 Rated Column F, One Ear Row D, Other Ear Table VII	40
6280 Rated Column F, One Ear Row C, Other Ear Table VII	30
6281 Rated Column F, One Ear Row B, Other Ear Table VII	20
6282 Rated Column F, One Ear Row A, Other Ear Table VII	10
6283 Rated Column E, One Ear Row E, Other Ear Table VII	60
6284 Rated Column E, One Ear Row D, Other Ear Table VII	40
6285 Rated Column E, One Ear Row C, Other Ear Table VII	30
6286 Rated Column E, One Ear Row B, Other Ear Table VII	20
6287 Rated Column E, One Ear Row A, Other Ear Table VII	10
6288 Rated Column D, One Ear Row D, Other Ear Table VII	40
6289 Rated Column D, One Ear Row C, Other Ear Table VII	20
6290 Rated Column D, One Ear Row B, Other Ear Table VII	20
6291 Rated Column D, One Ear Row A, Other Ear Table VII	10
6292 Rated Column C, One Ear Row C, Other Ear Table VII	20
6293 Rated Column C, One Ear Row B, Other Ear Table VII	10
6294 Rated Column C, One Ear Row A, Other Ear Table VII	0
6295 Rated Column B, One Ear Row B, Other Ear Table VII	10
6296 Rated Column B, One Ear Row A, Other Ear Table VII	0
6297 Rated Column A, One Ear Row A, Other Ear Table VII	0

[7] Entitled to special monthly compensation.

[41 FR 11300, Mar. 18, 1976, as amended at 43 FR 45361, Oct. 2, 1978]

§ 4.87b Schedule of ratings—other sense organs.

	Rating
6275 Loss of sense of smell, complete	10
6276 Loss of sense of taste, complete	10
NOTE. Anatomical or pathological basis required for the ratings under diagnostic codes 6275 and 6276.	

SYSTEMIC CONDITIONS

§ 4.88 Malaria.

In rating disability from malaria, once identified by clinical and laboratory methods, or by clinical methods alone where the disease is endemic, the clinical course of the disease, the frequency and severity of recurrences, the necessity for and the reaction to medication, should be the basis of evaluation, not the presence or absence of parasites. When there have been relapses following the initial course of treatment, further relapses are to be expected and for some time the veteran must be given the benefit of the doubt as to unexplained fever of short duration, controlled by medication specific for malaria.

[29 FR 6718, May 22, 1964, as amended at 43 FR 45361, Oct. 2, 1978]

§ 4.88a Schedule of ratings—systemic diseases.

	Rating
6300 Cholera, Asiatic:	
As active disease, and for 6 months' convalescence	100
Hemoglobinuric fever (blackwater fever).	
A complication of aestivoautumnal malaria.	
6301 Kala-azar (visceral leishmaniasis):	
As active disease, and for 1 year's convalescence	100
6302 Leprosy (Hansen's Disease):	
As active disease and for 1 year's convalescence	100
NOTE. Rate residuals as disfigurements, etc. The 100 percent rating applies to the active contagious disease requiring institutional care. Noncontagious cases will be treated under the appropriate schedule, for example, "The Skin".	
6304 Malaria:	
Clinically active so as to require hospital treatment for a contemplated or elapsed period of 14 days or more; or with a combination of cerebral symptoms, enlarged spleen, anemia or other severe symptoms	100
Clinically active so as to require intensive treatment; recently active with 3 or more relapses over past 6 months; or old cases with marked general impairment of health	50
Recently active with 2 relapses in past 6 months; or old cases with anemia	30
Recently active with one relapse in the past year; or old cases with moderate disability	10

	Rating
NOTE (1). The evaluations under Code 6304 are to be assigned on the basis of dates and frequency of recurrences and relapses and severity of significant residuals, if any, based on the clinical records of the service department or other acceptable evidence relating to the period of service, or on medical evidence relating to the period after discharge, recording sufficient clinical findings, when considered in accordance with all other data of record, to support the conclusion that there exists a compensable or higher degree of disability from malaria. Hereafter, service connection will not be conceded based on notation in service records of history alone furnished by the veteran, nor will compensable ratings be assigned based on the veteran's unsupported claim or statement; however, determinations heretofore made will not be reversed on the basis of this change in policy. The evidence of others under oath may be accepted to establish frequency of relapses or recurrences over a period of 1 year only, from date of last medically confirmed relapse or recurrence in service or subsequently.	
NOTE (2). When evaluations are based on frequency of recurrences or relapses only, they will be assigned for a period of 1 year only from date of discharge or date established by medical evidence of record. At the expiration of this period, if medical evidence warranting an extension is not of record, the veteran will be notified that his compensation will be discontinued unless he submits evidence from a physician showing recurrent attacks or other disabling effects of malaria. After a malaria rating has run 24 months, an extension, if warranted, will carry ending date at expiration of 36 months from initial date of compensable rating. When this rating is assigned, veteran will be notified of ending date and of requirement that, to have rating continued or resumed after that date, he must report to Veterans Administration hospital, or outpatient clinic, or to a Veterans Administration fee-basis physician during an actual relapse of the disease. Following the expiration of the 36 months' period and the veteran's compliance with the requirement to report as indicated in this note, a prepared slide of the veteran's blood smear will be read in the local Veterans Administration laboratory, and, if the interpretation is positive, the prepared slide will be mailed in a suitable container addressed to the Director, Compensation and Pension Service, with proper identification of the veteran, including C-number and time and place of smear, before further acceptance of the diagnosis of malaria for rating purposes.	
6305 Filariasis:	
Initial infection with severe lymphangitis or lymphadenitis	100
Chronic, with repeated recurrences and tendency to severe multiple involvement of extremities and scrotum or severe adenitis	100
Chronic, with repeated recurrences and beginning permanent deformity of the extremities or scrotum or moderate adenitis	60
Chronic, following any recurrence, symptomatic	30
With subsidence of symptoms following only one attack	0
NOTE. The following ratings of this code may be combined among themselves to cover multiple involvements but are not to be combined with the preceding ratings of this code.	
Permanent deformity of an extremity or of the scrotum.	
Severe	60
Moderate	30
Mild	10
6306 Oroya fever:	
As active disease, and for 6 months' convalescence	100
6307 Plague:	
As active disease	100
6308 Relapsing fever:	
As active febrile disease	100
Rate the residuals under the appropriate system.	
6309 Rheumatic fever:	
With cardiac manifestations, evaluate under diagnostic code 7000.	
With joint manifestations only, evaluate under diagnostic code 5002.	
6310 Syphilis:	
Rate the tertiary complications, of nervous system, vascular system, eyes or ears, or other system.	
6311 Tuberculosis, military:	
As active disease	100
If inactive, rate as for other forms of tuberculosis.	
6313 Avitaminosis:	
Rate as pellagra, according to severity.	
6314 Beriberi:	
Rate the residuals, peripheral neuritis, cardiorespiratory or digestive symptoms, edema, etc., under the appropriate schedule.	
6315 Pellagra:	
Pronounced; marked mental changes, moist dermatitis, inability to retain adequate nourishment, exhaustion, and cachexia	100
Severe; with the symptoms below, with variable nervous or mental symptoms and bodily vigor impaired	60
Moderately severe; with stomatitis, persistent diarrhea, and symmetrical dermatitis	40
Moderate; with presence of stomatitis, or achlorhydria, or recurring diarrhea	20
Mild; vague digestive disturbances, loss of appetite, and weight, slight diarrhea, headache and vertigo	10
6316 Brucellosis (Malta or undulant fever):	
Chronic forms:	
Severe, with frequent febrile episodes	50
Moderately severe, with febrile episodes not more frequently than once in 3 months	30
Moderate, with infrequent febrile episodes, but with fatigability, moderate depression, etc.	10
Rate complications, as arthritis, endocarditis, uveitis, etc., separately.	
6317 Typhus, scrub:	
As an active disease and for 6 months	100

	Rating
Rate residual cardiac condition (analogous to rheumatic heart disease), pulmonary involvement, thrombophlebitis, deafness, etc., separately.	
6350 Lupus erythematosus, systemic (disseminated):	
(Not to be combined with ratings under diagnostic code 7809.)	
Acute with constitutional manifestations associated with serous or synovial membrane or visceral involvement or other symptom combinations, totally incapacitating	100
Less than totally incapacitating, but in symptom combinations productive of severe impairment of health	80
Chronic with frequent exacerbations and multiple joint and organ manifestations productive of moderately severe impairment of health	60
Exacerbations of a week or more 2 or 3 times a year; or symptomatology productive of moderate impairment of health	30
Exacerbations once or twice a year or symptomatic during the past 2 years	10
NOTE. Rate residuals such as joint, renal, pleural, etc., under the appropriate system, not to be combined with ratings under code 6350. Assign the higher evaluation.	

[29 FR 6718, May 22, 1964, as amended at 41 FR 11300, Mar. 18, 1976; 43 FR 45361, Oct. 2, 1978]

§ 4.88b Ratings for inactive nonpulmonary tuberculosis initially entitled after August 19, 1968.

	Rating
For 1 year after date of inactivity, following active tuberculosis	100
Thereafter: Rate residuals under the specific body system or systems affected.	
Following the total rating for the 1 year period after date of inactivity, the schedular evaluation for residuals of nonpulmonary tuberculosis, i.e., ankylosis, surgical removal of a part, etc., will be assigned under the appropriate diagnostic code for the residual preceded by the diagnostic code for tuberculosis of the body part affected. For example, tuberculosis of the hip joint with residual ankylosis would be coded 5001-5250. Where there are existing residuals of pulmonary and nonpulmonary conditions, the evaluations for residual separate functional impairment may be combined.	
Where there are existing pulmonary and nonpulmonary conditions, the total rating for the 1 year, after attainment of inactivity, may not be applied to both conditions during the same period. However, the total rating during the 1-year period for the pulmonary or for the nonpulmonary condition will be utilized, combined with evaluation for residuals of the condition not covered by the 1-year total evaluation, so as to allow any additional benefit provided during such period.	

[34 FR 5062, Mar. 11, 1969]

§ 4.89 Ratings for inactive nonpulmonary tuberculosis in effect on August 19, 1968.

Public Law 90-493 repealed section 356 of title 38, United States Code which provided graduated ratings for inactive tuberculosis. The repealed section, however, still applies to the case of any veteran who on August 19, 1968, was receiving or entitled to receive compensation for tuberculosis. The use of the protective provisions of Public Law 90-493 should be mentioned in the discussion portion of all ratings in which these provisions are applied. For use in rating cases in which the protective provisions of Public Law 90-493 apply, the former evaluations are retained in this section.

	Rating
For 2 years after date of inactivity, following active tuberculosis, which was clinically identified during service or subsequently	100
Thereafter, for 4 years, or in any event, to 6 years after date of inactivity	50
Thereafter, for 5 years, or to 11 years after date of inactivity	30
Thereafter, in the absence of a schedular compensable permanent residual	0
Following the total rating for the 2-year period after date of inactivity, the schedular evaluation for residuals of nonpulmonary tuberculosis, i.e., ankylosis, surgical removal of a part, etc., if in excess of 50 percent or 30 percent will be assigned under the appropriate diagnostic code for the specific residual preceded by the diagnostic code for tuberculosis of the body part affected. For example, tuberculosis of the hipjoint with residual ankylosis would be coded 5001-5250.	

	Rating
The graduated ratings for nonpulmonary tuberculosis will not be combined with residuals of nonpulmonary tuberculosis unless the graduated rating and the rating for residual disability cover separate functional losses, e.g., graduated ratings for tuberculosis of the kidney and residuals of tuberculosis of the spine. Where there are existing pulmonary and nonpulmonary conditions, the graduated evaluation for the pulmonary, or for the nonpulmonary, condition will be utilized, combined with evaluations for residuals of the condition not covered by the graduated evaluation utilized, so as to provide the higher evaluation over such period.	
The ending dates of all graduated ratings of nonpulmonary tuberculosis will be controlled by the date of attainment of inactivity.	
These ratings are applicable only to veterans with nonpulmonary tuberculosis active on or after October 10, 1949.	

[29 FR 6718, May 22, 1964, as amended at 34 FR 5062, Mar. 11, 1969; 43 FR 45361, Oct. 2, 1978]

The Respiratory System

§ 4.96 Rating coexisting and "protected" respiratory conditions.

(a) *Rating coexisting respiratory conditions.* Ratings under diagnostic codes 6600 to 6818, inclusive, and 6821 will not be combined with each other. Where there is lung or pleural involvement, ratings under diagnostic codes 6819 and 6820 will not be combined with each other or with diagnostic codes 6600 to 6818 inclusive and 6821. A single rating will be assigned under the diagnostic code which reflects the predominant disability picture with elevation to the next higher evaluation where the severity of the overall disability warrants such elevation. However, in cases protected by the provisions of Public Law 90-493, with the graduated ratings for 50 and 30 percent for inactive tuberculosis, elevation is not for application.

(b) *Rating "protected" tuberculosis cases.* Public Law 90-493 repealed section 356 of title 38, United States Code which had provided graduated ratings for inactive tuberculosis. The repealed section, however, still applies to the case of any veteran who on August 19, 1968, was receiving or entitled to receive compensation for tuberculosis. The use of the protective provisions of Public Law 90-493 should be mentioned in the discussion portion of all ratings in which these provisions are applied. For application in rating cases in which the protective provisions of Public Law 90-493 apply the former evaluations pertaining to pulmonary tuberculosis are retained in § 4.97.

[34 FR 5062, Mar. 11, 1969]

§ 4.97 Schedule of ratings—respiratory system.

Diseases of the Nose and Throat

	Rating
6501 Rhinitis, atrophic, chronic:	
With massive crusting and marked ozena, with anosmia	50
With moderate crusting and ozena, atrophic changes	30
With definite atrophy of intranasal structure, and moderate secretion	10
6502 Septum, nasal, deflection of:	
Traumatic only,	
With marked interference with breathing space	10
With only slight symptoms	0
6504 Nose, loss of part of, or scars:	
Exposing both nares	30
Loss of part of one ala, or other obvious disfigurement	10
6510 Sinusitis, pansinusitis, chronic.	
6511 Sinusitis, ethmoid, chronic.	
6512 Sinusitis, frontal, chronic.	
6513 Sinusitis, maxillary, chronic.	
6514 Sinusitis, sphenoid, chronic:	
Postoperative, following radical operation, with chronic osteomyelitis requiring repeated curettage, or severe symptoms after repeated operations	50
Severe, with frequently incapacitating recurrences, severe and frequent headaches, purulent discharge or crusting reflecting purulence	30
Moderate, with discharge or crusting or scabbing, infrequent headaches	10
X-ray manifestations only, symptoms mild or occasional	0
6515 Laryngitis, tuberculous, active or inactive:	
Active	100
Inactive: See §§ 4.88b and 4.89.	
6516 Laryngitis, chronic:	
Severe; marked pathological changes, such as inflammation of cords or mucous membrane, thickening or nodules of cords or submucous infiltration, and marked hoarseness	30
Moderate; catarrhal inflammation of cords or mucous membrane, and moderate hoarseness	10
6517 Larynx, injuries of, healed:	
Rate as interference with voice (aphonia) or respiration.	
6518 Laryngectomy	100
6519 Aphonia, organic:	
Complete.	
Constant inability to communicate by speech	100
Constant inability to speak above a whisper	60
Partial; rate as laryngitis, chronic.	
6520 Larynx, stenosis of:	
Continuously requiring tracheotomy tube	100

DISEASES OF THE NOSE AND THROAT—Continued

	Rating
Severe impairment of respiration, dyspnea on slight exertion	60
Moderate impairment of respiration, dyspnea on moderate exertion	30
Mild, dyspnea on heavy exertion	10
NOTE. Or rate as aphonia.	

DISEASES OF THE TRACHEA AND BRONCHI

	Rating
6600 Bronchitis, chronic:	
Pronounced; with copious productive cough and dyspnea at rest; pulmonary function testing showing a severe degree of chronic airway obstruction; with symptoms of associated severe emphysema or cyanosis and findings of rightsided heart involvement	100
Severe: with severe productive cough and dyspnea on slight exertion and pulmonary function tests indicative of severe ventilatory impairment	60
Moderately severe; persistent cough at intervals throughout the day, considerable expectoration, considerable dyspnea on exercise, rales throughout chest, beginning chronic airway obstruction	30
Moderate; considerable night or morning cough, slight dyspnea on exercise, scattered bilateral rales	10
Mild; slight cough, no dyspnea, few rales	0
6601 Bronchiectasis:	
Pronounced; symptoms in aggravated form, marked emphysema, dyspnea at rest or on slight exertion, cyanosis, marked loss of weight or other evidence of severe impairment of general health	100
Severe; with considerable emphysema, impairment in general health manifested by loss of weight, anemia, or occasional pulmonary hemorrhages; occasional exacerbations of a few days duration, with fever, etc., are to be expected; demonstrated by lipiodol injection and layer sputum test	60
Moderate; persistent paroxysmal cough at intervals throughout the day, abundant purulent and fetid expectoration, slight, if any, emphysema or loss of weight	30
Mild; paroxysmal cough, mostly night or morning purulent expectoration	10
6602 Asthma, bronchial:	
Pronounced; asthmatic attacks very frequently with severe dyspnea on slight exertion between attacks and with marked loss of weight or other evidence of severe impairment of health	100
Severe; frequent attacks of asthma (one or more attacks weekly), marked dyspnea on exertion between attacks with only temporary relief by medication; more than light manual labor precluded	60
Moderate; asthmatic attacks rather frequent (separated by only 10–14 day intervals) with moderate dyspnea on exertion between attacks	30

DISEASES OF THE TRACHEA AND BRONCHI—Continued

	Rating
Mild; paroxysms of asthmatic type breathing (high pitched expiratory wheezing and dyspnea) occurring several times a year with no clinical findings between attacks	10
NOTE. In the absence of clinical findings of asthma at time of examination, a verified history of asthmatic attacks must be of record.	
6603 Emphysema, pulmonary:	
Pronounced; intractable and totally incapacitating; with dyspnea at rest, or marked dyspnea and cyanosis on mild exertion; severity of emphysema confirmed by chest X-rays and pulmonary function tests	100
Severe; exertional dyspnea sufficient to prevent climbing one flight of steps or walking one block without stopping; ventilatory impairment of severe degree confirmed by pulmonary function tests with marked impairment of health	60
Moderate; with moderate dyspnea occurring after climbing one flight of steps or walking more than one block on level surface; pulmonary function tests consistent with findings of moderate emphysema	30
Mild; with evidence of ventilatory impairment on pulmonary function tests and/or definite dyspnea on prolonged exertion	10

DISEASES OF THE LUNGS AND PLEURA—TUBERCULOSIS

RATINGS FOR PULMONARY TUBERCULOSIS ENTITLED ON AUGUST 19, 1978

	Rating
6701 Tuberculosis, pulmonary, chronic, far advanced, active.	
6702 Tuberculosis, pulmonary, chronic, moderately advanced, active.	
6703 Tuberculosis, pulmonary, chronic, minimal, active.	
6704 Tuberculosis, pulmonary, chronic, active, advancement unspecified	100
6721 Tuberculosis, pulmonary, chronic, far advanced, inactive.	
6722 Tuberculosis, pulmonary, chronic, moderately advanced, inactive.	
6723 Tuberculosis, pulmonary, chronic, minimal, inactive.	
6724 Tuberculosis, pulmonary, chronic, inactive, advancement unspecified.	
General Rating Formula for Inactive Pulmonary Tuberculosis:	
For 2 years after date of inactivity, following active pulmonary tuberculosis, which was clinically identified during active service, or subsequently	100
Thereafter, for 4 years, or in any event, to 6 years after date of inactivity	50
Thereafter, for 5 years, or to 11 years after date of inactivity	30

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DISEASES OF THE LUNGS AND PLEURA—TUBERCULOSIS—Continued

RATINGS FOR PULMONARY TUBERCULOSIS ENTITLED ON AUGUST 19, 1978

	Rating
Following far advanced lesions diagnosed at any time while the disease process was active, minimum	30
Following moderately advanced lesions, provided there is continued disability, emphysema, dyspnea on exertion, impairment of health, etc	20
Otherwise	0
NOTE (1). The 100 pct rating under codes 6701 through 6724 is not subject to a requirement of precedent hospital treatment. It will be reduced to 50 percent for failure to submit to examination or to follow prescribed treatment upon report to that effect from the medical authorities. When a veteran is placed on the 100 pct rating for inactive tuberculosis, the medical authorities will be appropriately notified of the fact, and of the necessity under 38 U.S.C. 356 to notify the Adjudication Division in the event of failure to submit to examination or to follow prescribed treatment.	
NOTE (2). The graduated 50 pct and 30 pct ratings and the permanent 30 pct and 20 pct ratings for inactive pulmonary tuberculosis are not to be combined with ratings for other respiratory disabilities. Following thoracoplasty the rating will be for removal of ribs combined with the rating for collapsed lung. Resection of ribs incident to thoracoplasty will be rated as removal.	

RATINGS FOR PULMONARY TUBERCULOSIS INITIALLY ENTITLED AFTER AUGUST 19, 1968

	Rating
6730 Tuberculosis, pulmonary, chronic, active	100
6731 Tuberculosis, pulmonary, chronic, inactive:	
For 1 year after date of attainment of inactivity of tuberculosis	100
Thereafter, rate residuals attributable to tuberculosis:	
Pronounced: Advanced fibrosis with severe ventilatory deficit manifested by dyspnea at rest, marked restriction of chest expansion, with pronounced impairment of bodily vigor	100
Severe; extensive fibrosis, severe dyspnea on slight exertion with corresponding ventilatory deficit confirmed by pulmonary function tests with marked impairment of health	60
Moderate; with considerable pulmonary fibrosis and moderate dyspnea on slight exertion, confirmed by pulmonary function tests	30
Definitely symptomatic with pulmonary fibrosis and moderate dyspnea on extended exertion	10
Healed lesions, minimal or no symptoms	0
Active pulmonary tuberculosis will be considered permanently and totally disabling for non-service-connected pension purposes in the following circumstances:	
(a) Associated with active tuberculosis involving other than the respiratory system.	
(b) With severe associated symptoms or with extensive cavity formation.	
(c) Reactivated cases, generally	
(d) With definite advancement of lesions on successive examinations or while under treatment.	
(e) Without retrogression of lesions or other evidence of material improvement at the end of 6 months hospitalization or without change of diagnosis from active" at the end of 12 months hospitalization.	
NOTE. Material improvement means lessening or absence of clinical symptoms, and X-ray findings of a stationary or retrogressive lesion.	
6732 Pleurisy, tuberculous, active or inactive:	
Active	100
Inactive See §§ 4.88b and 4.89.	

DISEASES OF THE LUNGS AND PLEURA—TUBERCULOSIS—Continued

RATINGS FOR PULMONARY TUBERCULOSIS ENTITLED ON AUGUST 19, 1978

(Duplicate of the table above; see that table.)

NONTUBERCULOUS DISEASES

	Rating
6800 Anthracosis (Black Lung Disease).	
6801 Silicosis.	
6802 Pneumoconiosis, unspecified:	
Pronounced; with extent of lesions comparable to far advanced pulmonary tuberculosis or pulmonary function tests confirming a markedly severe degree of ventilatory deficit; with dyspnea at rest and other evidence of severe impairment of bodily vigor producing total incapacity	100
Severe; extensive fibrosis, severe dyspnea on slight exertion with corresponding ventilatory deficit confirmed by pulmonary function tests with marked impairment of health	60
Moderate; witn considerable pulmonary fibrosis and moderate dyspnea on slight exertion, confirmed by pulmonary function tests	30
Definitely symptomatic with pulmonary fibrosis and moderate dyspnea on extended exertion	10
6803 Actinomycosis of lung.	
6804 Streptotrichosis of lung.	
6805 Blastomycosis of lung.	
6806 Sporotrichosis of lung.	
6807 Aspergillosis of lung.	
6808 Mycosis of lung, unspecified.	
Rate Codes 6803 through 6808, when active, 70 percent to 100 percent; when inactive, rate residuals on appropriate analogy.	
6809 Lung, abscess of:	
Residuals, rate as chronic pleurisy following empyema; the postoperative requirement for the 100 percent rating is thoracoplasty rather than pneumolysis.	

NONTUBERCULOUS DISEASES—Continued

	Rating
6810 Pleurisy, serofibrinous:	
Chronic pleurisy, fibrous, following lobar pneumonia and other acute diseases of the lungs or pleural cavity, without empyema, is considered a nondisabling condition, except with diaphragmatic pleurisy, pain in chest, obliteration of costophrenic angles, tenting of diaphragm	10
6811 Pleurisy, purulent (empyema):	
Following intrapleural or extrapleural pneumolysis	100
Very severe; when in addition to the findings and symptoms outlined under "severe" there is persistent underweight, with marked weakness and fatigability on slight exertion	80
Severe; with extensive pleural or pleuropericardial adhesions, marked restriction of respiratory excursions and chest deformity, intractable to treatment	60
Moderately severe; with residual marked dyspnea or cardiac embarrassment on moderate exertion	30
Moderate; with some embarrassment of respiratory function	10
6812 Fistula, bronchocutaneous, or bronchopleural:	
Following amebiasis, subdiaphragmatic abscess, pulmonary abscess, or empyema. Rate as chronic pleurisy following empyema; while persistent, the minimum rating will be	60
6813 Lung, permanent collapse of, complete	50
Partial, approximately one-half collapsed	30
6814 Pneumothorax, spontaneous, for 6 months	100
NOTE. Rate residuals analogous to bronchial asthma diagnostic code 6602.	
6815 Pneumonectomy	60
6816 Lobectomy:	
Bilateral	50
Unilateral	30
NOTE. The ratings under code 6816 do not apply to removal of the middle lobe of the right lung, segmental resections, or lingualectomies.	
6817 Lung, chronic passive congestion of:	
Rate the underlying disease.	
6818 Pleural cavity, injuries, residuals of, including gunshot wounds:	
Severe; tachycardia, dyspnea or cyanosis on slight exertion, adhesions of diaphragm or pericardium with marked restriction of excursion, or poor response to exercise	60
Moderately severe; with pain in chest and dyspnea on moderate exertion (exercise tolerance test), adhesions of diaphragm, with excursions restricted, moderate myocardial deficiency, and one or more of the following: thickened pleura, restricted expansion of lower chest, compensating contralateral emphysema, deformity of chest, scoliosis, hemoptysis at intervals	40
Moderate; bullet or missile retained in lung, with pain or discomfort on exertion; or with scattered rales or some limitation of excursion of diaphragm or of lower chest expansion	20

NONTUBERCULOUS DISEASES—Continued

	Rating
NOTE (1). Disabling injuries of shoulder girdle muscles (Groups I to IV) will be separately rated for combination.	
NOTE (2). Disability persists in penetrating chest wounds, with or without retained missile, in proportion to interference with respiration and circulation, which may become apparent after slight exertion or only under extra stress. Records of examination, both before and after exertion, controlled with fluoroscopic and proper blood pressure determination, are essential for proper evaluation of disability. Exercise tolerance tests should have regard both to dyspnea on exertion and to continued acceleration of pulse rate beyond physiological limits.	
When residuals are totally incapacitating	100
6819 New growths of, malignant, any specified part of respiratory system exclusive of skin growths	100
NOTE. The rating under diagnostic code 6819 will be continued for 2 years following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.	
6820 New growths of, benign, any specified part of respiratory system.	
The rating will be based on interference with respiration, using any applicable respiratory analogy.	
6821 Coccidioidomycosis:	
Initial infections with manifestations of toxemia or pulmonary cavitation, abscess or granuloma requiring rest or surgical therapy (pneumothorax, lobectomy, or thoracoplasty)	100
The progressive disseminated infection with demonstrable evidence of activity	100
Localized pulmonary cavitation or localized dense and confluent lesions, with occasional hemoptysis (otherwise nonsymptomatic) and not requiring treatment	80
Healed lesions, nonsymptomatic	0
Postoperative.	
Rate on surgical residuals.	
NOTE. This disease, San Joaquin Valley Fever, has an incubation period up to 21 days, and the disseminated phase is ordinarily manifest within 6 months of the acute phase. However, there are instances of delayed onset of the disseminated phase, up to many years, after the initial infection which may have been unrecognized. Accordingly, when service connection is under consideration in the absence of record or other evidence of the disease in service, service in southwestern United States where the disease is endemic and absence of prolonged residence in this locality before or after service will be the deciding factor.	

[29 FR 6718, May 22, 1964, as amended at 34 FR 5062, Mar. 11, 1969; 40 FR 42539, Sept. 15, 1975; 41 FR 11300, Mar. 18, 1976; 43 FR 45361, Oct. 2, 1978]

THE CARDIOVASCULAR SYSTEM

§ 4.100 Necessity for complete diagnosis.

The common types of disease of the heart are those of rheumatic, syphilitic, arteriosclerotic, hypertensive, or hyperthyroid etiology. Determinations of relationship to service and evaluation, in the case of disability due to disease of the heart, require accurate identification of the disease, as an active or residual condition, with the complete required classification of etiology, structural lesions, manifestations, and capacity for work. Many common diagnoses following the first World War do not represent disease entities. "Chronic myocarditis," for example, except as a continuing inflammation following an identified acute myocarditis due to rheumatic fever or other infectious agent, is not a satisfactory diagnosis; there should be further identification of the etiological agent and structural lesions, prior to rating action. The very common diagnosis "mitral insufficiency" is likewise unsatisfactory as reflecting organic valvular disease in the absence of associated mitral stenosis, definite cardiac enlargement without other causes, or history of rheumatic manifestations. An acceptable diagnosis cannot be based upon the presence of systolic murmurs alone. Tachycardia and bradycardia, the various arrythmias, and cardiac hypertrophy or dilatation, do not represent generally acceptable diagnoses, and elevation or depression of the systolic or diastolic pressure is usually a manifestation of disease, rather than a clinical entity.

§ 4.101 Rheumatic heart disease.

Rheumatic fever is an acute infectious disease, affecting the structures about the joints (though without permanent bone damage) and, frequently, the endocardium. Children are as a rule affected, usually before the age of 20 years. Seldom is the initial attack after 25 years. The disease tends to recur, and serious heart trouble may follow the first or a subsequent attack. With acute rheumatic fever in service, perhaps without manifest damage to the heart, a subsequent recurrence of the infection, should be accepted as service connected. With even a few days service, service connection may be given for an acute rheumatic fever and any cardiac residuals. On the other hand, a mitral insufficiency without a history of rheumatic fever, chorea, or tonsillitis, or definite complication in service, must be considered as functional. Aortic insufficiency with a history of rheumatic fever and manifestation within approximately 15 years from the date of syphilitic infection, if any, should generally be considered rheumatic and always so when there is associated mitral or aortic stenosis. With a history of rheumatic fever in service, an aortic insufficiency manifest some years later without other cause shown may be service connected. The subsequent progress of rheumatic heart disease, and the effect of superimposed arteriosclerotic or hypertensive changes cannot usually be satisfactorily disassociated or separated so as to permit differential service connection. It is for this reason, in part, that great insistence is placed upon ascertainment of the service-connected disease as a true pathological entity. A subsequent change of diagnosis from one of an organic condition to one reflecting the effect of psychic or nervous factors casts doubt on the original diagnosis, but unless the correction is promptly made continuance of the service connection and of the evaluation under the new diagnosis is required. Such a change does not reflect an improvement of the physical condition.

§ 4.102 Varicose veins and phlebitis.

With severe varicose veins, tests to determine impairment of deep return circulation are essential, as the superficial varicosities may be caused by the impairment of deep return circulation, or there may be phlebitis as a complication of varicose ulcers. With phlebitis, or impairment of deep return circulation, the appropriate higher rating should be applied.

§ 4.103 [Reserved]

§ 4.104 Schedule of ratings—cardiovascular system.

DISEASES OF THE HEART

	Rating
7000 Rheumatic heart disease:	
As active disease and, with ascertainable cardiac manifestation, for a period of 6 months	100
Inactive:	
Definite enlargement of the heart confirmed by roentgenogram and clinically; dyspnea on slight exertion; rales, pretibial pitting at end of day or other definite signs of beginning congestive failure; more than sedentary employment is precluded	100
The heart definitely enlarged; severe dyspnea on exertion, elevation of systolic blood pressure, or such arrhythmias as paroxysmal auricular fibrillation or flutter or paroxysmal tachycardia; more than light manual labor is precluded	60
From the termination of an established service episode of rheumatic fever, or its subsequent recurrence, with cardiac manifestations, during the episode or recurrence, for 3 years, or diastolic murmur with characteristic EKG manifestations or definitely enlarged heart	30
With identifiable valvular lesion, slight, if any dyspnea, the heart not enlarged; following established active rheumatic heart disease	10
7001 Endocarditis, bacterial, subacute.	
7002 Pericarditis, bacterial or rheumatic, acute.	
Rate as rheumatic heart disease.	
7003 Adhesions, pericardial:	
Extensive, obliterating the sac, with congestive heart failure	100
Rate lesser conditions as rheumatic heart disease, inactive.	
7004 Syphilitic heart disease:	
Rate as rheumatic heart disease, inactive.	
7005 Arteriosclerotic heart disease:	
During and for 6 months following acute illness from coronary occlusion or thrombosis, with circulatory shock, etc	100
After 6 months, with chronic residual findings of congestive heart failure or angina on moderate exertion or more than sedentary employment precluded	100
Following typical history of acute coronary occlusion or thrombosis as above, or with history of substantiated repeated anginal attacks, more than light manual labor not feasible	60
Following typical coronary occlusion or thrombosis, or with history of substantiated anginal attack, ordinary manual labor feasible	30

DISEASES OF THE HEART—Continued

	Rating
7006 Myocardium, infarction of, due to thrombosis or embolism.	
Rate as arteriosclerotic heart disease.	
7007 Hypertensive heart disease:	
With definite signs of congestive failure, more than sedentary employment precluded	100
With marked enlargement of the heart, confirmed by roentgenogram, or the apex beat beyond midclavicular line, sustained diastolic hypertension, diastolic 120 or more, which may later have been reduced, dyspnea on exertion, more than light manual labor is precluded	60
With definite enlargement of the heart, sustained diastolic hypertension of 100 or more, moderate dyspnea on exertion	30
7008 Hyperthyroid heart disease:	
With signs of congestive failure	100
With permanent or paroxysmal auricular fibrillation	60
NOTE. The ratings under Code 7008 are not to be combined with ratings for hyperthyroidism. Rate lesser conditions as hyperthyroidism.	
Cardiac neurosis.	
Refer to psychiatric schedule.	
NOTE. The following Codes 7010 through 7015 reflecting arrhythmias and conduction abnormalities are occasionally encountered. Standing alone they represent incomplete diagnoses. Ratings are not to be combined with those for other heart or psychiatric conditions.	
7010 Auricular flutter, paroxysmal.	
Rate as paroxysmal tachycardia.	
7011 Auricular fibrillation, paroxysmal.	
Rate as paroxysmal tachycardia.	
7012 Auricular fibrillation, permanent	10
7013 Tachycardia, paroxysmal:	
Severe, frequent attacks	30
Infrequent attacks	10
7014 Sinus tachycardia:	
Persistently 100 or more in recumbent position	10
7015 Auriculoventricular block:	
Complete; with attacks of syncope necessitating the insertion of a permanent internal pacemaker, and for 1 year, after which period the rating will be on residuals as below	100
Complete: with Stokes-Adams attacks several times a year despite the use of medication or management of the heart block by pacemaker	60
Complete; without syncope or minimum rating when pacemaker has been inserted	30
Incomplete; without syncope but occasionally symptomatic	10
Incomplete; asymptomatic, without syncope or need for medicinal control after more than 1 year	0

DISEASES OF THE HEART—Continued

	Rating
NOTE 1. Artriventricular block, partial or complete, may be present associated with and related to the supraventricular tachycardias or pathological bradycardia. Cases with Mobitz Type II block may be encountered, as well as Wenckebach's phenomenon, Mobitz Type I block, and varying degrees of A-V block associated with tachyarrhythmias or other severe disturbances in rate or rhythm. Such unusual cases should be submitted to the Director, Compensation and Pension Service. On the other hand, simple delayed P-R conduction time, in the absence of other evidence of cardiac disease, is not a disability.	
NOTE 2. The 100 percent rating for 1 year following implantation of permanent pacemaker will commence after initial grant of the 1 month total rating assigned under § 4.30 following hospital discharge.	
7016 Heart valve replacement (prosthesis):	
For 1 year following implantation of prosthetic valve	100
Thereafter; rate as rheumatic heart disease; minimum rating	30
NOTE. The 100 percent rating for 1 year following implantation of prosthetic valve will commence after initial grant of the 1 month total rating assigned under § 4.30 following hospital discharge.	
7017 Coronary artery bypass:	
For 1 year following bypass surgery	100
Thereafter, rate as arteriosclerotic heart disease.	
Minimum rating	30
NOTE. Authentic myocardial insufficiency with arteriosclerosis may be substituted for occlusion.	
NOTE. The 100 pct rating for 1 year following bypass surgery will commence after the initial grant of the 1-month total rating assigned under § 4.30 following hospital discharge.	

DISEASES OF THE ARTERIES AND VEINS

	Rating
7100 Arteriosclerosis, general:	
With slight weakening of bodily vigor	20
Without symptoms or renal, cardiac, or cerebral complications	0
NOTE. Rate the arteriosclerotic complications, such as renal, cardiac, or cerebral, under the appropriate schedule.	
7101 Hypertensive vascular disease (essential arterial hypertension):	
Diastolic pressure predominantly 130 or more and severe symptoms	60
Diastolic pressure predominantly 120 or more and moderately severe symptoms	40
Diastolic pressure predominantly 110 or more with definite symptoms	20
Diastolic pressure predominantly 100 or more	10

DISEASES OF THE ARTERIES AND VEINS—Continued

	Rating
NOTE 1. For the 40 percent and 60 percent ratings under code 7101, there should be carefull attention to diagnosis and repeated blood pressure readings.	
NOTE 2. When continuous medication is shown necessary for control of hypertension with a history of diastolic blood pressure predominantly 100 or more, a minimum rating of 10 percent will be assigned.	
7110 Aneurysm, aortic, fusiform, sacular, dissection and/or with stenosis:	
After establishment of diagnosis with markedly disabling symptoms; and for 1 year after surgical correction (with any type graft)	100
If exertion and exercise is precluded	60
Thereafter, rate residual of graft insertion according to findings and symptoms under most appropriate analogy.	
Minimum rating	20
NOTE. The 100 percent rating for 1 year following surgical correction will commence after initial grant of the 1-month total rating under § 4.30 assigned following hospital discharge.	
7111 Artery, any large artery, aneurysm of:	
In lower extremities, symptomatic	60
In upper extremities, symptomatic	40
NOTE. Rate post-operative residuals with graft insertion under most appropriate analogy, e.g., 7116, etc., minimum rating 20 percent.	
7112 Artery, small, aneurysmal dilatation of	10
7113 Arteriovenous aneurysm, traumatic:	
With cardiac involvement, minimum rating	60
Without cardiac involvement with marked vascular symptoms.	
Lower extremity	50
Upper extremity	40
With definite vascular symptoms.	
Lower extremity	30
Upper extremity	40
7114 Arteriosclerosis obliterans.	
7115 Thromboangiitis obliterans (Buerger's disease).	
7116 Claudication, intermittent:	
Severe form with marked circulatory changes such as to produce total incapacity or to require house or bed confinement	100
Persistent coldness of extremity with claudication on minimal walking	60
Well-established cases, with intermittent claudication or recurrent episodes of superficial phlebitis	40
Minimal circulatory impairment, with paresthesias, temperature changes or occasional claudication	20
NOTE. The 100 percent rating will not be applied under a diagnosis of intermittent claudication.	
7117 Raynaud's disease:	
Severe form with marked circulatory changes such as to produce total incapacity or to require house or bed confinement	100
Multiple painful, ulcerated areas	60
Frequent vasomotor disturbances characterized by blanching, rubor and cyanosis	40
Occasional attacks of blanching or flushing	20

DISEASES OF THE ARTERIES AND VEINS—Continued

	Rating
NOTE. The schedular evaluations in excess of 20 percent under Diagnostic Codes 7114, 7115, 7116, and 7117 are for application to unilateral involvements. With bilateral involvements, separately meeting the requirements for evaluation in excess of 20 percent, 10 percent will be added to the evaluation for the more severely affected extremity only, except where the disease has resulted in an amputation. The resultant amputation rating will be combined with the schedular rating for the other extremity, including the bilateral factor, if applicable. The 20 percent evaluations are for application to unilateral or bilateral involvement of both upper and lower extremities.	
7118 Angioneurotic edema:	
Severe; frequent attacks with severe manifestations and prolonged duration	40
Moderate; frequent attacks of moderate extent and duration	20
Mild; infrequent attacks of slight extent and duration	10
7119 Erythromelalgia:	
Severe	40
Moderate	20
Mild	10
7120 Varicose veins.	
Pronounced; unilateral or bilateral, the findings of the severe condition with secondary involvement of the deep circulation, as demonstrated by Trendelenburg's and Perthe's tests, with ulceration and pigmentation:	
Bilateral	60
Unilateral	50
Severe; involving superficial veins above and below the knee, with involvement of the long saphenous, ranging over 2 cm. in diameter, marked distortion and sacculation, with edema and episodes of ulceration; no involvement of the deep circulation:	
Bilateral	50
Unilateral	40
Moderately severe; involving superficial veins above and below the knee, with varicosities of the long saphenous, ranging in size from 1 to 2 cm. in diameter, with symptoms of pain or cramping on exertion; no involvement of the deep circulation:	
Bilateral	30
Unilateral	20
Moderate; varicosities of superficial veins below the knees, with symptoms of pain or cramping on exertion:	
Bilateral or unilateral	10
Mild; or with no symptoms	0
NOTE. Severe varicosities below the knee, with ulceration, scarring, or discoloration and painful symptoms will be rated as moderately severe.	
7121 Phlebitis or thrombophlebitis, unilateral, with obliteration of deep return circulation, including traumatic conditions:	
Massive board-like swelling, with severe and constant pain at rest	100
Persistent swelling, subsiding only very slightly and incompletely with recumbency elevation with pigmentation cyanosis, eczema or ulceration	60
Persistent swelling of leg or thigh, increased on standing or walking 1 or 2 hours, readily relieved by recumbency; moderate discoloration, pigmentation and cyanosis or persistent swelling of arm or forearm, increased in the dependent position; moderate discoloration, pigmentation or cyanosis	30
Persistent moderate swelling of leg not markedly increased on standing or walking or persistent swelling of arm or forearm not increased in the dependent position	10
NOTE. When phlebitis is present in both lower extremities or both upper extremities, apply bilateral factor.	
7122 Frozen feet, residuals of (immersion foot).	
With loss of toes, or parts, and persistent severe symptoms:	
Bilateral	50
Unilateral	30
With persistent moderate swelling, tenderness, redness, etc:	
Bilateral	30
Unilateral	20
With mild symptoms, chilblains:	
Bilateral	10
Unilateral	10
NOTE. With extensive losses higher ratings may be found warranted by reference to amputation ratings for toes and combination of toes; in the most severe cases, ratings for amputation or loss of use of one or both feet should be considered. There is no requirement of loss of toes or parts for the persistent moderate or mild under this diagnostic code.	

[29 FR 6718, May 22, 1964, as amended at 40 FR 42539, Sept. 15, 1975; 41 FR 11300, Mar. 18, 1976; 43 FR 45361, Oct. 2, 1978]

THE DIGESTIVE SYSTEM

§ 4.110 Ulcers.

Experience has shown that the term "peptic ulcer" is not sufficiently specific for rating purposes. Manifest differences in ulcers of the stomach or duodenum in comparison with those at an anastomotic stoma are sufficiently recognized as to warrant two separate graduated descriptions. In evaluating the ulcer, care should be taken that the findings adequately identify the particular location.

§ 4.111 Postgastrectomy syndromes.

There are various postgastrectomy symptoms which may occur following

anastomotic operations of the stomach. When present, those occurring during or immediately after eating and known as the "dumping syndrome" are characterized by gastrointestinal complaints and generalized symptoms simulating hypoglycemia; those occurring from 1 to 3 hours after eating usually present definite manifestations of hypoglycemia.

§ 4.112 Weight loss.

Minor weight loss or greater losses of weight for periods of brief duration are not considered of importance in rating. Rather, weight loss becomes of importance where there is appreciable loss which is sustained over a period of time. In evaluating weight loss generally, consideration will be given not only to standard age, height, and weight tables, but also to the particular individual's predominant weight pattern as reflected by the records. The use of the term "inability to gain weight" indicates that there has been a significant weight loss with inability to regain it despite appropriate therapy.

§ 4.113 Coexisting abdominal conditions.

There are diseases of the digestive system, particularly within the abdomen, which, while differing in the site of pathology, produce a common disability picture characterized in the main by varying degrees of abdominal distress or pain, anemia and disturbances in nutrition. Consequently, certain coexisting diseases in this area, as indicated in the instruction under the title "Diseases of the Digestive System," do not lend themselves to distinct and separate disability evaluations without violating the fundamental principle relating to pyramiding as outlined in § 4.14.

§ 4.114 Schedule of ratings—digestive system.

Ratings under diagnostic codes 7301 to 7329, inclusive, 7331, 7342, and 7345 to 7348 inclusive will not be combined with each other. A single evaluation will be assigned under the diagnostic code which reflects the predominant disability picture, with elevation to the next higher evaluation where the severity of the overall disability warrants such elevation.

	Rating
7200 Mouth, injuries of.	
Rate as for disfigurement and impairment of function of mastication.	
7201 Lips, injuries of.	
Rate as for disfigurement of face.	
7202 Tongue, loss of whole or part:	
With inability to communicate by speech	100
One-half or more	60
With marked speech impairment	30
7203 Esophagus, stricture of:	
Permitting passage of liquids only, with marked impairment of general health	80
Severe, permitting liquids only	50
Moderate	30
7204 Esophagus, spasm of (cardiospasm).	
If not amenable to dilation, rate as for the degree of obstruction (stricture).	
7205 Esophagus, diverticulum of, acquired.	
Rate as for obstruction (stricture).	
7301 Peritoneum, adhesions of:	
Severe; definite partial obstruction shown by X-ray, with frequent and prolonged episodes of severe colic distension, nausea or vomiting, following severe peritonitis, ruptured appendix, perforated ulcer, or operation with drainage	50
Moderately severe; partial obstruction manifested by delayed motility of barium meal and less frequent and less prolonged episodes of pain	30
Moderate; pulling pain on attempting work or aggravated by movements of the body, or occasional episodes of colic pain, nausea, constipation (perhaps alternating with diarrhea) or abdominal distension	10
Mild	0
NOTE. Ratings for adhesions will be considered when there is history of operative or other traumatic or infectious (intraabdominal) process, and at least two of the following: disturbance of motility, actual partial obstruction, reflex disturbances, presence of pain.	
7304 Ulcer, gastric.	
7305 Ulcer, duodenal:	
Severe; pain only partially relieved by standard ulcer therapy, periodic vomiting, recurrent hematemesis or melena, with manifestations of anemia and weight loss productive of definite impairment of health	60
Moderately severe; less than severe but with impairment of health manifested by anemia and weight loss; or recurrent incapacitating episodes averaging 10 days or more in duration at least four or more times a year	40
Moderate; recurring episodes of severe symptoms two or three times a year averaging 10 days in duration; or with continuous moderate manifestations	20
Mild; with recurring symptoms once or twice yearly	10
7306 Ulcer, marginal (gastrojejunal):	
Pronounced; periodic or continuous pain unrelieved by standard ulcer therapy with periodic vomiting, recurring melena or hematemesis, and weight loss. Totally incapacitating	100
Severe; same as pronounced with less pronounced and less continuous symptoms with definite impairment of health	60

	Rating
Moderately severe; intercurrent episodes of abdominal pain at least once a month partially or completely relieved by ulcer therapy, mild and transient episodes of vomiting or melena	40
Moderate; with episodes of recurring symptoms several times a year	20
Mild; with brief episodes of recurring symptoms once or twice yearly	10
7307 Gastritis, hypertrophic (identified by gastroscope):	
Chronic; with severe hemorrhages, or large ulcerated or eroded areas	60
Chronic; with multiple small eroded or ulcerated areas, and symptoms	30
Chronic; with small nodular lesions, and symptoms	10
Gastritis, atrophic.	
A complication of a number of diseases, including pernicious anemia.	
Rate the underlying condition.	
7308 Postgastrectomy syndromes:	
Severe; associated with nausea, sweating, circulatory disturbance after meals, diarrhea, hypoglycemic symptoms, and weight loss with malnutrition and anemia	60
Moderate; less frequent episodes of epigastric disorders with characteristic mild circulatory symptoms after meals but with diarrhea and weight loss	40
Mild; infrequent episodes of epigastric distress with characteristic mild circulatory symptoms or continuous mild manifestations	20
7309 Stomach, stenosis of.	
Rate as for gastric ulcer.	
7310 Stomach, injury of, residuals.	
Rate as peritoneal adhesions.	
7311 Liver, injury of.	
With residual disability, rate as peritoneal adhesions.	
Healed, no residuals	0
7312 Liver, cirrhosis of:	
Pronounced; aggravation of the symptoms for moderate and severe, necessitating frequent tapping	100
Severe; ascites requiring infrequent tapping, or recurrent hemorrhage from esophageal varices, aggravated symptoms and impaired health	70
Moderately severe; liver definitely enlarged with abdominal distention due to early ascites and with muscle wasting and loss of strength	50
Moderate; with dilation of superficial abdominal veins, chronic dyspepsia, slight loss of weight or impairment of health	30
7313 Liver, abscess of, residuals:	
With severe symptoms	30
With moderate symptoms	20
7314 Cholecystitis, chronic:	
Severe; frequent attacks of gall bladder colic	30
Moderate; gall bladder dyspepsia, confirmed by X-ray technique, and with infrequent attacks (not over two or three a year) of gall bladder colic, with or without jaundice	10
Mild	0
7315 Cholelithiasis, chronic.	
Rate as for chronic cholecystitis.	
7316 Cholangitis, chronic.	
Rate as for chronic cholecystitis.	
7317 Gall bladder, injury of.	
Rate as for peritoneal adhesions.	
7318 Gall bladder, removal of:	
With severe symptoms	30
With mild symptoms	10
Nonsymptomatic	0
Spleen, disease or injury of.	
See Hemic and Lymphatic Systems.	
7319 Irritable colon syndrome (spastic colitis, mucous colitis, etc.):	
Severe; diarrhea, or alternating diarrhea and constipation, with more or less constant abdominal distress	30
Moderate; frequent episodes of bowel disturbance with abdominal distress	10
Mild; disturbances of bowel function with occasional episodes of abdominal distress	0
7321 Amebiasis:	
Mild gastrointestinal disturbances, lower abdominal cramps, nausea, gaseous distention, chronic constipation interrupted by diarrhea	10
Asymptomatic	0
NOTE: Amebiasis with or without liver abscess is parallel in symptomatology with ulcerative colitis and should be rated on the scale provided for the latter. Similarly, lung abscess due to amebiasis will be rated under the respiratory system schedule, diagnostic code 6809.	
7322 Dysentery, bacillary.	
Rate as for ulcerative colitis.	
7323 Colitis, ulcerative:	
Pronounced; resulting in marked malnutrition anemia, and general debility, or with serious complication as liver abscess	100
Severe; with numerous attacks a year and malnutrition, the health only fair during remissions	60
Moderately severe; with frequent exacerbations	30
Moderate; with infrequent exacerbations	10
7324 Distomiasis, intestinal or hepatic:	
Severe symptoms	30
Moderate symptoms	10
Mild or no symptoms	0
7325 Enteritis, chronic.	
Rate as for irritable colon syndrome.	
7326 Enterocolitis, chronic.	
Rate as for irritable colon syndrome.	
7327 Diverticulitis.	
Rate as for irritable colon syndrome, peritoneal adhesions, or colitis, ulcerative, depending upon the predominant disability picture.	
7328 Intestine, small, resection of:	
With marked interference with absorption and nutrition, manifested by severe impairment of health objectively supported by examination findings including material weight loss	60
With definite interference with absorption and nutrition, manifested by impairment of health objectively supported by examination findings including definite weight loss	40
Symptomatic with diarrhea, anemia and inability to gain weight	20
NOTE. Where residual adhesions constitute the predominant disability, rate under diagnostic code 7301.	
7329 Intestine, large, resection of:	
With severe symptoms, objectively supported by examination findings	40
With moderate symptoms	20
With slight symptoms	10
NOTE. Where residual adhesions constitute the predominant disability, rate under diagnostic code 7301.	
7330 Intestine, fistula of, persistent, or after attempt at operative closure:	
Copious and frequent, fecal discharge	100

	Rating
Constant or frequent, fecal discharge	60
Slight infrequent, fecal discharge	30
Healed; rate for peritoneal adhesions.	
7331 Peritonitis, tuberculous, active or inactive:	
Active	100
Inactive: See §§ 4.88b and 4.89.	
7332 Rectum and anus, impairment of sphincter control:	
Complete loss of sphincter control	100
Extensive leakage and fairly frequent involuntary bowel movements	60
Occasional involuntary bowel movements, necessitating wearing of pad	30
Constant slight, or occasional moderate leakage	10
Healed or slight, without leakage	0
7333 Rectum and anus, stricture of:	
Requiring colostomy	100
Great reduction of lumen, or extensive leakage	50
Moderate reduction of lumen, or moderate constant leakage	30
7334 Rectum, prolapse of:	
Severe (or complete), persistent	50
Moderate, persistent or frequently recurring	30
Mild with constant slight or occasional moderate leakage	10
7335 Ano, fistula in.	
Rate as for impairment of sphincter control.	
7336 Hemorrhoids, external or internal:	
With persistent bleeding and with secondary anemia, or with fissures	20
Large or thrombotic, irreducible, with excessive redundant tissue, evidencing frequent recurrences	10
Mild or moderate	0
7337 Pruritus ani.	
Rate for the underlying condition.	
7338 Hernia, inguinal:	
Large, postoperative, recurrent, not well supported under ordinary conditions and not readily reducible, when considered inoperable	60
Small, postoperative recurrent, or unoperated irremediable, not well supported by truss, or not readily reducible	30
Postoperative recurrent, readily reducible and well supported by truss or belt	10
Not operated, but remediable	0
Small, reducible, or without true hernia protrusion	0
NOTE. Add 10 percent for bilateral involvement, provided the second hernia is compensable. This means that the more severely disabling hernia is to be evaluated, and 10 percent, only, added for the second hernia, if the latter is of compensable degree.	
7339 Hernia, ventral, postoperative:	
Massive, persistent, severe diastasis of recti muscles or extensive diffuse destruction or weakening of muscular and fascial support of abdominal wall so as to be inoperable	100
Large, not well supported by belt under ordinary conditions	40
Small, not well supported by belt under ordinary conditions, or healed ventral hernia or postoperative wounds with weakening of abdominal wall and indication for a supporting belt	20
Wounds, postoperative, healed, no disability, belt not indicated	0
7340 Hernia, femoral.	
Rate as for inguinal hernia.	
7342 Visceroptosis, symptomatic, marked	10
7343 New growths, malignant, exclusive of skin growths	100
NOTE. The rating under diagnostic code 7343 will be continued for 1 year following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.	
7344 New growths, benign, any specified part of digestive system, exclusive of skin growths.	
The rating will be based on interference with digestion, using any applicable digestive analogy.	
7345 Hepatitis, infectious:	
With marked liver damage manifest by liver function test and marked gastrointestinal symptoms, or with episodes of several weeks duration aggregating three or more a year and accompanied by disabling symptoms requiring rest therapy	100
With moderate liver damage and disabling recurrent episodes of gastrointestinal disturbance, fatigue, and mental depression	60
Minimal liver damage with associated fatigue, anxiety, and gastrointestinal disturbance of lesser degree and frequency but necessitating dietary restriction or other therapeutic measures	30
Demonstrable liver damage with mild gastrointestinal disturbance	10
Healed, nonsymptomatic	0
7346 Hernia hiatal:	
Symptoms of pain, vomiting, material weight loss and hematemesis or melena with moderate anemia; or other symptom combinations productive of severe impairment of health	60
Persistently recurrent epigastric distress with dysphagia, pyrosis, and regurgitation, accompanied by substernal or arm or shoulder pain, productive of considerable impairment of health	30
With two or more of the symptoms for the 30 percent evaluation of less severity	10
7347 Pancreatitis:	
With frequently recurrent disabling attacks of abdominal pain with few pain free intermissions and with steatorrhea, malabsorption, diarrhea and severe malnutrition	100
With frequent attacks of abdominal pain, loss of normal body weight and other findings showing continuing pancreatic insufficiency between acute attacks	60
Moderately severe; with at least 4–7 typical attacks of abdominal pain per year with good remission between attacks	30
With at least one recurring attack of typical severe abdominal pain in the past year	10
NOTE 1. Abdominal pain in this condition must be confirmed as resulting from pancreatitis by appropriate laboratory and clinical studies.	
NOTE 2. Following total or partial pancreatectomy, rate under above, symptoms, minimum rating 30 percent.	
7348 Vagotomy with pyloroplasty or gastroenterostomy:	
Followed by demonstrably confirmative postoperative complications of stricture or continuing gastric retention	40
With symptoms and confirmed diagnosis of alkaline gastritis, or of confirmed persisting diarrhea	30
Recurrent ulcer with incomplete vagotomy	20

	Rating
NOTE. Rate recurrent ulcer following complete vagotomy under diagnostic code 7305, minimum rating 20 percent; and rate dumping syndrome under diagnostic code 7308.	

[29 FR 6718, May 22, 1964, as amended at 34 FR 5063, Mar. 11, 1969; 40 FR 42540, Sept. 15, 1975; 41 FR 11301, Mar. 18, 1976]

THE GENITOURINARY SYSTEM

§ 4.115 Nephritis.

Albuminuria alone is not nephritis, nor will the presence of transient albumin and casts following acute febrile illness be taken as nephritis. The glomerular type of nephritis is usually preceded by or associated with severe infectious disease; the onset is sudden, and the course marked by red blood cells, salt retention, and edema; it may clear up entirely or progress to a chronic condition. The nephrosclerotic type, originating in hypertension or arteriosclerosis, develops slowly, with minimum laboratory findings, and is associated with natural progress. Separate ratings are not to be assigned for disability from disease of the heart and any form of nephritis, on account of the close interrelationships of cardiovascular disabilities.

[41 FR 34258, Aug. 13, 1976]

§ 4.115a Schedule of ratings—genito-urinary system.

DISEASES OF THE GENITOURINARY SYSTEM

	Rating
7500 Kidney, removal of one, with nephritis, infection, or pathology of the other:	
Severe	100
Mild to moderate	60
Absence of one, the other functioning normally	30
NOTE. The absence of one kidney prior to enlistment or the congenital nonfunctioning of one kidney will require a deduction of 30 percent from the 60 percent rating under Code 7500; when, under these circumstances, a total disability on the basis of unemployability is considered to exist, the claims folder will be referred to the Director, Compensation and Pension Service, under § 3.321(b) of this chapter.	
7501 Kidney, abscess of.	
Rate for residuals.	
7502 Nephritis, chronic:	
Pronounced; persistent edema and albuminuria; or marked retention of non-protein nitrogen, creatinine or urea nitrogen; with markedly decreased kidney function or severe cardiovascular complications and chronic invalidism	100
Severe; persistent edema and albuminuria; or moderate retention of non-protein nitrogen, creatinine or urea nitrogen; or moderately decreased kidney function or moderate cardiac complications	80
Moderately severe; constant albuminuria with some edema; or definite decrease in kidney function; or associated moderate hypertension	60
Moderate; albumin constant or recurring with hyaline and granular casts or red blood cells; transient or slight edema or hypertension, diastolic 100 or more	30
Mild; albumin and casts with history of acute nephritis or associated mild hypertension, diastolic 100 or more	10
7503 Pyelitis.	
Rate as hydronephrosis.	
7504 Pyelonephritis, chronic.	
Rate as hydronephrosis (pyuria required).	
7505 Kidney, tuberculosis of, active or inactive:	
Active	100
Inactive: See §§ 4.88b and 4.89.	
7507 Nephrosclerosis, arteriolar.	
NOTE. Rate as chronic nephritis or hypertensive cardiovascular or vascular disease, according to predominating symptoms. With nephrosclerosis, the rating for cardiac disease or hypertension will be increased to the next higher.	
7508 Nephrolithiasis.	
Rate as hydronephrosis (calculus in kidney required; staghorn or multiple stones filling pelvis of kidney, rate 30 percent).	
7509 Hydronephrosis.	
Severe; with infection or involvement of the other kidney.	
Rate as absence of one kidney with nephritis, infection or pathology of the other.	
Moderately severe; frequent attacks of colic with infection (pyonephrosis), kidney function greatly impaired	30
Moderate; frequent attacks of colic, requiring catheter drainage	20
Mild; only an occasional attack of colic, not infected and not requiring catheter drainage	10
7510 Ureterolithiasis.	
Rate as hydronephrosis.	
7511 Ureter, stricture of.	
Rate as hydronephrosis.	
7512 Cystitis, chronic:	
Where incontinence exists, requiring constant wearing of an appliance	60
Severe; urination at intervals of 1 hour or less; contracted bladder	40
Moderately severe; diurnal and noctural frequency with pain, tenesmus	20
Moderate; pyuria, with diurnal and noctural frequency	10
Mild	0
7513 Cystitis, interstitial (Hunner), submucous or elusive ulcer	60

DISEASES OF THE GENITOURINARY SYSTEM—Continued

	Rating
7514 Bladder, tuberculosis of, active or inactive:	
Active	100
Inactive: See §§ 4.88b and 4.89.	
7515 Bladder, calculus in, with symptoms interfering with function.	
Rate as cystitis.	
7516 Bladder, fistula of:	
Postoperative, suprapubic cystotomy	100
7517 Bladder, injury of.	
Rate as cystitis.	
7518 Urethra, stricture of:	
Requiring frequent dilatations with cystitis	30
Requiring dilatations every 2 or 3 months	10
Slight to moderate, healed, requiring only occasional dilatations (1 or 2 times a year)	0
7519 Urethra, fistula of:	
Multiple urethroperineal	100
Severe; multiple, with continuous drainage requiring constant use of appliance or frequent change of pad	60
Moderate; fistual with continuous drainage requiring constant use of pad or appliance	40
Mild; slight intermittent leakage	20
7520 Penis, removal of half or more	30
7521 Penis, removal of glans	20
7522 Penis, deformity, with loss of erectile power	20
7523 Testis, atrophy complete:	
Both	20
One	0
7524 Testis, removal:	
Both	30
One, other than undescended or congenitally undeveloped	10
NOTE. In cases of the removal of one testis as the result of a service-incurred injury or disease, other than an undescended or congenitally undeveloped testicle, with the absence or nonfunctioning of the other testis unrelated to service, a rating of 20 percent will be assigned for the service-connected testicular loss. Testis, undescended, or congenitally undeveloped is not a ratable disability.	
7525 Epidiymo-orchitis, tuberculous, active or inactive:	
Active	100
Inactive: See §§ 4.88b and 4.89.	
7526 Prostate gland, resection or removal.	
Rate as cystitis in accordance with severity; minimum rating, 20 percent.	
7527 Prostate gland injuries, infections, hypertrophy, post-operative residuals.	
Rate as for chronic cystitis, depending upon functional disturbance of bladder.	
7528 New growths, malignant, any specified part of genitourinary system	100
NOTE. The rating under code 7528 will be continued for 1 year following the cessation of surgical, X-ray antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals, minimum	10
7529 New growths, benign, any specified part of genitourinary system.	
The rating will be based on interference with genitourinary functions, using any applicable genitourinary analogy.	
7530 Chronic renal disease:	
Requiring regular hemodialysis	100

DISEASES OF THE GENITOURINARY SYSTEM—Continued

	Rating
7531 Kidney transplant:	
For 2 years following transplant surgery	100
Thereafter: Rate residual symptoms under diagnostic code 7500, minimum rating	30
NOTE. The 100 percent rating for 2 years following transplant surgery will commence after initial grant of the 1 month total rating assigned under § 4.30 following hospital discharge.	

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GYNECOLOGICAL CONDITIONS

§ 4.116 Rating gynecological conditions.

In rating disability from gynecological conditions the following will not be considered as ratable conditions: (a) the natural menopause, (b) amenorrhea, when this is based upon developmental defect or abnormality, and (c) pregnancy and childbirth and their incidents, except surgical complications under certain circumstances. The surgical complications of pregnancy will not be held the result of service except when additional disability resulted from treatment therein or they are otherwise directly attributable to unusual circumstances of service. Congenital malformations are not ratable conditions. New growths are to be rated in accordance with the effect upon parts or organs involved whose function is impaired or whose resection or excision is indicated. The excision of uterus, ovaries, etc., prior to the natural menopause is considered disabling.

[41 FR 34258, Aug. 13, 1976]

§ 4.116a Schedule of ratings—gynecological conditions.

	Rating
7610 Vulvovaginitis.	
7611 Vaginitis.	

	Rating
7612 Cervicitis.	
7613 Metritis.	
7614 Salpingitis.	
7615 Oophoritis:	
Severe, as chronic residuals of infections, burns, chemicals, foreign bodies, etc	30
Moderate	10
Mild	0
7617 Uterus and both ovaries, removal of, complete:	
For 6 months after removal	100
Thereafter	50
7618 Uterus, removal of, including corpus:	
For 3 months after removal	100
Thereafter	30
7619 Ovaries, removal of both:	
With complete extirpation and artificial menopause, for 6 months after excision	100
Thereafter	30
Removal of one with or without partial removal of the other	10
7620 Ovaries, atrophy of both, complete	20
7621 Uterus, prolapse:	
Complete, through vulva	50
Incomplete	30
7622 Uterus, displacement of:	
Severe; with marked displacement and frequent or continuous menstrual disturbances	30
Moderate; with adhesions and irregular menstruation	10
Mild; slight symptoms	0
7623 Pregnancy, surgical complications of:	
Severe; with rectocele or cystocele	50
Moderate; with relaxation of perineum	10
Mild	0
7624 Fistula, rectovaginal.	
Rate as ano, fistula in, under diagnostic code 7335.	
7625 Fistula, urethrovaginal.	
Rate as urethra, fistula of, under diagnostic code 7519.	
7626 Mammary glands, removal of.	
With extensive damage to muscles and nerves:	
Both	80
One	50
With removal of axillary glands:	
Both	60
One	40
Without removal of axillary glands:	
Both	50
One	30
7627 New growths, malignant, gynecological system or mammary glands	100
NOTE. The rating under code 7627 will be continued for 1 year following the cessation of surgical, X-ray antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals, minimum	10

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THE HEMIC AND LYMPHATIC SYSTEMS

§ 4.117 Schedule of ratings—hemic and lymphatic systems.

	Rating
7700 Anemia, pernicious:	
Acute, rapidly progressive, without remission, or few or brief remissions	100
Chronic, following acute attacks, severe with characteristic marked departures from normal blood count, with severe impairment of health and pronounced asthenia	70
Chronic, following acute attacks with characteristic definite departures from normal blood count, with impairment of health and severe asthenia	60
Incipient, with characteristic achlorhydria and changes in blood count	30
7701 Anemia, secondary.	
Rate the underlying disease entity.	
7702 Agranulocytosis, acute.	
Rate as acute pernicious anemia.	
7703 Leukemia:	
Requiring intensive treatment such as periodic irradiation or transfusion	100
Otherwise rate as pernicious anemia.	
7704 Polycythemia, primary.	
Rate as pernicious anemia.	
7705 Purpura hemorrhagica:	
Acute fulminating forms, or with few or brief remissions	100
Chronic, following acute attacks, severe with infrequent hemorrhages, not more than 1 a year	70
Chronic, following severe attacks, and several years remission	60
Cured, with splenectomy	30
7706 Splenectomy	30
7707 Spleen, injury of, healed.	
Rate as peritoneal adhesions.	
7709 Lymphogranulomatosis (Hodgkin's disease):	
Acute (malignant) types or chronic types with frequent episodes of high and progressive fever or febrile episodes with only short remissions, generalized edema, ascites, pleural effusion, or severe anemia with marked general weakness	100
General muscular weakness with loss of weight and chronic anemia; or secondary pressure symptoms, such as marked dyspnea, edema with pains and weakness of extremity, or other evidence of severe impairment of general health	60
Occasional low-grade fever, mild anemia, fatigability or pruritus	30
NOTE. The 100 percent rating will be continued for 1 year following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or invasion of other organs, the rating will be made on residuals.	
7710 Adenitis, cervical, tuberculous, active or inactive:	
Active	100
Inactive: See §§ 4.88b and 4.89.	
7711 Adenitis, axillary, tuberculous, active or inactive:	
Active	100
Inactive: See §§ 4.88b and 4.89.	

	Rating
7712 Adenitis, inguinal, tuberculous, active or inactive:	
Active	100
Inactive: See §§ 4.88b and 4.89.	
7713 Adenitis, secondary.	
Rate the underlying disease.	
7714 Sickle cell anemia:	
Pronounced; with repeated painful crises, occurring in skin, joints, bones or any major organs caused by hemolysis and sickling of red blood cells with anemia, thrombosis and infarction, in symptom combinations that are totally incapacitating	100
Severe; with painful hemolytic crises several times a year or in symptom combinations less disabling than above with more than light manual labor not feasible	60
Moderately severe; following repeated hemolytic sickling crises but with only moderate impairment of health	30
Mild; asymptomatic, established case in remission, but with identifiable organ impairment present	10
NOTE. Sickle cell trait alone without a history of or current pathological findings directly attributable to such trait is not a ratable disability. Cases of symptomatic sickle cell trait will be forwarded to the Director, Compensation, and Pension Service for review.	

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THE SKIN

§ 4.118 Schedule of ratings—skin.

	Rating
7800 Scars, disfiguring, head, face or neck:	
Complete or exceptionally repugnant deformity of one side of face or marked or repugnant bilateral disfigurement	50
Severe, especially if producing a marked and unsightly deformity of eyelids, lips, or auricles	30
Moderate; disfiguring	10
Slight	0
NOTE. When in addition to tissue loss and cicatrization there is marked discoloration, color contrast, or the like, the 50 percent rating under Code 7800 may be increased to 80 percent, the 30 percent to 50 percent, and the 10 percent to 30 percent. The most repugnant, disfiguring conditions, including scars and diseases of the skin, may be submitted for central office rating, with several unretouched photographs.	
7801 Scars, burns, third degree:	
Area or areas exceeding 1 square foot (0.1 m.^{2})	40
Area or areas exceeding one-half square foot (0.05 m.^{2})	30
Area or areas exceeding 12 square inches (77.4 cm.^{2})	20
Area or areas exceeding 6 square inches (38.7 cm.^{2})	10
NOTE (1). Actual third degree residual involvement required to the extent shown under 7801.	
NOTE (2). Ratings for widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and combined.	
7802 Scars, burns, second degree:	
Area or areas approximating 1 square foot (0.1 m.^{2})	10
NOTE.—See NOTE (2) under diagnostic code 7801.	
7803 Scars, superficial, poorly nourished, with repeated ulceration	10
7804 Scars, superficial, tender and painful on objective demonstration	10
NOTE. The 10 percent rating will be assigned, when the requirements are met, even though the location may be on tip of finger or toe, and the rating may exceed the amputation value for the limited involvement.	
7805 Scars, other.	
Rate on limitation of function of part affected.	
7806 Eczema:	
With ulceration or extensive exfoliation or crusting, and systematic or nervous manifestations, or exceptionally repugnant	50
With exudation or itching constant, extensive lesions, or marked disfigurement	30
With exfoliation, exudation or itching, if involving an exposed surface or extensive area	10
With slight, if any, exfoliation, exudation or itching, if on a nonexposed surface or small area	0
7807 Leishmaniasis, americana (mucocutaneous, espundia).	
7808 Leishmaniasis, old world (cutaneous, oriental sore).	
7809 Lupus erythematosus, discoid.	
(Not to be combined with ratings under diagnostic code 6350.)	
7810 Pinta.	
7811 Tuberculosis luposa (lupus vulgaris), active or inactive:	
Active	100
Inactive: See §§ 4.88b and 4.89.	
7812 Verruga peruana.	
7813 Dermatophytosis.	
7814 Tinea barbae.	
7815 Pemphigus.	
7816 Psoriasis.	
7817 Dermatitis exfoliativa.	
7818 New growths, malignant, skin.	
Rate scars, disfigurement, etc., on the extent of constitutional symptoms, physical impairment.	
7819 New growths, benign, skin.	
Rate as scars, disfigurement, etc.	
Unless otherwise provided, rate codes 7807 through 7819 as for eczema, dependent upon location, extent, and repugnant or otherwise disabling character of manifestations.	
NOTE. The most repugnant conditions may be submitted for central office rating with several unretouched photographs. Total disability ratings may be assigned without reference to Central Office in the most severe cases of pemphigus and dermatitis exfoliativa with constitutional symptoms.	

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THE ENDOCRINE SYSTEM

§ 4.119 Schedule of ratings—endocrine system.

	Rating
7900 Hyperthyroidism, with diffuse (exophthalmic) goiter:	
Pronounced; with thyroid enlargement, severe tachycardia, exophthalmos, high basal metabolic rate (over plus 30), etc., rapidly progressive, with marked nervous, cardiovascular, or gastro-intestinal symptoms; muscular weakness and loss of weight; or post-operative with poor results, the symptoms under "pronounced" persisting; in symptom combinations such as to produce complete industrial incapacity	100
Severe; with marked emotional instability, fatigability, tachycardia and increased blood pressure, high basal metabolic rate approaching plus 30; exophthalmos not always present; symptomatology such as to produce severe industrial inadaptability	60
NOTE. If disease of the heart predominates, rate as hyperthyroid heart disease.	
Moderately severe; with the history shown under "severe," but with reduced symptoms; or postoperative, with persistent symptoms such as to produce considerable industrial inadaptability	30
Moderate or postoperative with symptomatology such as to produce definite and appreciable industrial inadaptability	10
In remission; or operated; cured	0
7901 Thyroid gland, toxic adenoma of.	
Rate as hyperthyroidism, exophthalmos not required.	
7902 Thyroid gland, nontoxic adenoma of:	
With pressure symptoms or marked disfigurement	10
Nonsymptomatic	0
NOTE. For higher ratings, see organs whose function is affected.	
7903 Hypothyroidism:	
Pronounced; with a long history and slow pulse, low blood pressure, low basal metabolic rate below minus 30; high blood cholesterol, sluggish mentality, sleepiness, etc.; in symptom combinations such as to produce complete industrial incapacity	100
Severe; the symptoms under "pronounced" somewhat less marked (except that the basal metabolic rate must be below minus 30), and such as to produce severe industrial inadaptability	60
Moderately severe; sluggish mentality and other indications of myxedema, low basal metabolic rate, such as to produce considerable industrial inadaptability	30
Moderate; with symptomatology such as to produce definite and appreciable industrial inadaptability	10
In remission	0
7904 Hyperparathyroidism (osteitis fibrosa cystica):	
Pronounced; with generalized decalcification of bones, high blood and urinary calcium, marked loss of weight and weakness; in symptom combinations such as to produce complete industrial incapacity	100
Severe; symptomatology such as to produce severe industrial inadaptability	60
Following operation or treatment.	
Rate as residual of benign tumor, considering especially bones and kidneys.	
7905 Hypoparathyroidism:	
Postoperative; following thyroidectomy, with painful muscular spasms (tetany), or with marked neuromuscular excitability; such as to produce complete industrial incapacity	100
For lesser degree rate by analogy with hyperthyroidism.	
7907 Hyperpituitarism (pituitary basophilism, Cushing's syndrome):	
As active progressive disease with symptomatology such as to produce complete industrial incapacity	100
With recovery, or controlled by X-ray, rate the complications or residuals.	
7908 Hyperpituitarism (acromegaly or gigantism):	
Pronounced; hypofunctional stage following stage of hyperfunction, with genital decline and atrophy, hypotrichosis, hypoglycemia, obesity and asthenia; in symptom combinations such as to produce complete industrial incapacity	100
Severe; bone and joint pains, hyperglycemia and glycosuria, symptoms of intracranial pressure in optic region, etc.; such as to produce severe industrial inadaptability	60
Moderate; enlargement of acral parts, or overgrowth of long bones, with X-ray evidence of enlarged sella turcica, such as to produce considerable industrial inadaptability	30
7909 Hypopituitarism (diabetes insipidus):	
Pronounced; with marked symptoms of intracranial pressure, etc., such as to produce complete industrial incapacity	100
Severe; polyuria with dehydration; systolic and diastolic blood pressure below normal, such as to produce severe industrial inadaptability	60
Moderately severe; polyuria with increase in urinary chlorides, etc., such as to produce considerable industrial inadaptability	30
Moderate; with polyuria and polydipsia	10
7910 Hyperadrenia (adrenogenital syndrome).	
Postoperative; rate for residuals.	

	Rating
7911 Addison's disease (adrenal cortical hypofunction):	
Four or more crises during the past year each substantiated by clinical findings of increasingly severe hypotension, dehydration and pronounced weakness with laboratory evidence such as hyponatremia, hyperpotasemia, azotemia, hypoglycemia	60
Three crises substantiated as for the 60% rating during the past year; or episodes of lesser symptomatology manifested by vomiting, diarrhea, hypotension and marked weakness occurring 5 or more times during the past year	30
Well-established Addison's disease with 1 or 2 crises or less than 5 episodes of the lesser symptomatology during the past year; or with symptoms such as weakness and fatigability	10
NOTE. Tuberculous Addison's disease will be rated as active or inactive tuberculosis. See §§ 4.88b and 4.89. On attainment of inactivity, the ratings under Code 7911 are not to be combined with the graduated ratings of 50 percent and 30 percent in § 4.89; assign the higher rating.	
7912 Pluriglandular syndromes.	
Rate according to major manifestations.	
7913 Diabetes mellitus:	
Pronounced; uncontrolled, that is, with persistent hyperglycemia and glycosuria, despite large insulin dosage, restricted diet and regulation of activities; with progressive loss of weight and strength, or severe complications	100
Severe; requiring large insulin dosage, but with considerable loss of weight and strength and with mild complications, such as pruritis ani, mild vascular deficiencies, or beginning ocular disturbances	60
Moderately severe; requiring large insulin dosage, restricted diet, and careful regulation of activities, i.e., avoidance of strenuous occupational and recreational activities	40
Moderate; with moderate insulin or oral hypoglycemic agent dosage, and restricted (maintenance) diet; without impairment of health or vigor or limitation of activity	20
Mild; controlled by restricted diet, without insulin; without impairment of health or vigor or limitation of activity	10
NOTE. Definitely established complications such as amputations, impairment of central visual acuity, peripheral neuropathy with definite sensory or motor impairment of definitely established arteriosclerotic focalizations will be separately rated under the applicable diagnostic codes. When the diagnosis of diabetes mellitus is definitely established it is neither necessary nor advisable to request glucose tolerance tests for rating purposes.	
7914 New growth, malignant, any specified part of endocrine system	100
NOTE. The rating under code 7914 will be continued for 1 year following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. At this point, if there has been no local recurrence or metastases, the rating will be made on residuals.	
7915 New growths, benign, any specified part of endocrine system. The rating will be based on interference with endocrine functions, using any applicable endocrine analogy.	

[29 FR 6718, May 22, 1964, as amended at 34 FR 5064, Mar. 11, 1969; 40 FR 42540, Sept. 15, 1975; 41 FR 11301, Mar. 18, 1976]

Neurological Conditions and Convulsive Disorders

§ 4.120 Evaluations by comparison.

Disability in this field is ordinarily to be rated in proportion to the impairment of motor, sensory or mental function. Consider especially psychotic manifestations, complete or partial loss of use of one or more extremities, speech disturbances, impairment of vision, disturbances of gait, tremors, visceral manifestations, injury to the skull, etc. In rating disability from the conditions in the preceding sentence refer to the appropriate schedule. In rating peripheral nerve injuries and their residuals, attention should be given to the site and character of the injury, the relative impairment in motor function, trophic changes, or sensory disturbances.

§ 4.121 Identification of epilepsy.

When there is doubt as to the true nature of epileptiform attacks, neurological observation in a hospital adequate to make such a study is necessary. To warrant a rating for epilepsy, the seizures must be witnessed or verified at some time by a physician. As to frequency, competent, consistent lay testimony emphasizing convulsive and immediate post-convulsive characteristics may be accepted. The frequency of seizures should be ascertained under the ordinary conditions of life (while not hospitalized).

§ 4.122 Psychomotor epilepsy.

The term psychomotor epilepsy refers to a condition that is characterized by seizures and not uncommonly by a chronic psychiatric disturbance as well.

(a) Psychomotor seizures consist of episodic alterations in conscious control that may be associated with auto-

matic states, generalized convulsions, random motor movements (chewing, lip smacking, fumbling), hallucinatory phenomena (involving taste, smell, sound, vision), perceptual illusions (deja vu, feelings of loneliness, strangeness, macropsia, micropsia, dreamy states), alterations in thinking (not open to reason), alterations in memory, abnormalities of mood or affect (fear, alarm, terror, anger, dread, well-being), and autonomic disturbances (sweating, pallor, flushing of the face, visceral phenomena such as nausea, vomiting, defecation, a rising feeling of warmth in the abdomen). Automatic states or automatisms are characterized by episodes of irrational, irrelevant, disjointed, unconventional, asocial, purposeless though seemingly coordinated and purposeful, confused or inappropriate activity of one to several minutes (or, infrequently, hours) duration with subsequent amnesia for the seizure. Examples: A person of high social standing remained seated, muttered angrily, and rubbed the arms of his chair while the National Anthem was being played; an apparently normal person suddenly disrobed in public; a man traded an expensive automobile for an antiquated automobile in poor mechanical condition and after regaining conscious control, discovered that he had signed an agreement to pay an additional sum of money in the trade. The seizure manifestations of psychomotor epilepsy vary from patient to patient and in the same patient from seizure to seizure.

(b) A chronic mental disorder is not uncommon as an interseizure manifestation of psychomotor epilepsy and may include psychiatric disturbances extending from minimal anxiety to severe personality disorder (as distinguished from developmental) or almost complete personality disintegration (psychosis). The manifestations of a chronic mental disorder associated with psychomotor epilepsy, like those of the seizures, are protean in character.

§ 4.123 Neuritis, cranial or peripheral.

Neuritis, cranial or peripheral, characterized by loss of reflexes, muscle atrophy, sensory disturbances, and constant pain, at times excruciating, is to be rated on the scale provided for injury of the nerve involved, with a maximum equal to severe, incomplete, paralysis. See nerve involved for diagnostic code number and rating. The maximum rating which may be assigned for neuritis not characterized by organic changes referred to in this section will be that for moderate, or with sciatic nerve involvement, for moderately severe, incomplete paralysis.

§ 4.124 Neuralgia, cranial or peripheral.

Neuralgia, cranial or peripheral, characterized usually by a dull and intermittent pain, of typical distribution so as to identify the nerve, is to be rated on the same scale, with a maximum equal to moderate incomplete paralysis. See nerve involved for diagnostic code number and rating. Tic douloureux, or trifacial neuralgia, may be rated up to complete paralysis of the affected nerve.

§ 4.124a Schedule of ratings—neurological conditions and convulsive disorders.

Organic Diseases of the Central Nervous System

[With the exceptions noted, disability from the following diseases and their residuals may be rated from 10 percent to 100 percent in proportion to the impairment of motor, sensory, or mental function. Consider especially psychotic manifestations, complete or partial loss of use of one or more extremities, speech disturbances, impairment of vision, disturbances of gait, tremors, visceral manifestations, etc., referring to the appropriate bodily system of the schedule. With partial loss of use of one or more extremities from neurological lesions, rate by comparison with the mild, moderate, severe, or complete paralysis of peripheral nerves.]

	Rating
8000 Encephalitis, epidemic, chronic:	
As active febrile disease	100
Rate residuals, minimum	10
Brain, new growth of:	
8002 Malignant	100
NOTE: The rating in code 8002 will be continued for 2 years following cessation of surgical, chemotherapeutic or other treatment modality. At this point, if the residuals have stabilized, the rating will be made on neurological residuals according to symptomatology.	
Minimum rating	30
8003 Benign, minimum	60
Rate residuals, minimum	10
8004 Paralysis agitans:	
Minimum rating	30

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ORGANIC DISEASES OF THE CENTRAL NERVOUS SYSTEM—Continued

	Rating
8005 Bulbar palsy	100
8007 Brain, vessels, embolism of.	
8008 Brain, vessels, thrombosis of.	
8009 Brain, vessels, hemorrhage from:	
Rate the vascular conditions under Codes 8007 through 8009, for 6 months	100
Rate residuals, thereafter, minimum	10
8010 Myelitis:	
Minimum rating	10
8011 Poliomyelitis, anterior:	
As active febrile disease	100
Rate residuals, minimum	10
8012 Hematomyelia:	
For 6 months	100
Rate residuals, minimum	10
8013 Syphilis, cerebrospinal.	
8014 Syphilis, meningovascular.	
8015 Tabes dorsalis.	
NOTE. Rate upon the severity of convulsions, paralysis, visual impairment or psychotic involvement, etc.	
8017 Amyotrophic lateral sclerosis:	
Minimum rating	30
8018 Multiple sclerosis:	
Minimum rating	30
8019 Meningitis, cerebrospinal, epidemic:	
As active febrile disease	100
Rate residuals, minimum	10
8020 Brain, abscess of:	
As active disease	100
Rate residuals, minimum	10
Spinal cord, new growths of:	
8021 Malignant	100
NOTE. The rating in code 8021 will be continued for 2 years following cessation of surgical, chemotherapeutic or other treatment modality. At this point, if the residuals have stabilized, the rating will be made on neurological residuals according to symptomatology.	
Minimum rating	30
8022 Benign, minimum rating	60
Rate residuals, minimum	10
8023 Progressive muscular atrophy:	
Minimum rating	30
8024 Syringomyelia:	
Minimum rating	30
8025 Myasthenia gravis:	
Minimum rating	30
NOTE. It is required for the minimum ratings for residuals under diagnostic codes 8000-8025, that there be ascertainable residuals. Determinations as to the presence of residuals not capable of objective verification, i.e., headaches, dizziness, fatigability, must be approached on the basis of the diagnosis recorded; subjective residuals will be accepted when consistent with the disease and not more likely attributable to other disease or no disease. It is of exceptional importance that when ratings in excess of the prescribed minimum ratings are assigned, the diagnostic codes utilized as bases of evaluation be cited, in addition to the codes identifying the diagnoses.	
8045 Brain disease due to trauma:	
Purely neurological disabilities, such as hemiplegia, epileptiform seizures, facial nerve paralysis, etc., following trauma to the brain, will be rated under the diagnostic codes specifically dealing with such disabilities, with citation of a hyphenated diagnostic code (e.g., 8045-8207).	
Purely subjective complaints such as headache, dizziness, insomnia, etc., recognized as symptomatic of brain trauma, will be rated 10 percent and no more under diagnostic code 9304. This 10 percent rating will not be combined with any other rating for a disability due to brain trauma. Ratings in excess of 10 percent for brain disease due to trauma under diagnostic code 9304 are not assignable in the absence of a diagnosis of non-psychotic organic brain syndrome with brain trauma.	
8046 Cerebral arteriosclerosis:	
Purely neurological disabilities, such as hemiplegia, cranial nerve paralysis, etc., due to cerebral arteriosclerosis will be rated under the diagnostic codes dealing with such specific disabilities, with citation of a hyphenated diagnostic code (e.g., 8046-8207).	
Purely subjective complaints such as headache, dizziness, tinnitus, insomnia and irritability, recognized as symptomatic of a properly diagnosed cerebral arteriosclerosis, will be rated 10 percent and no more under diagnostic code 9305. This 10 percent rating will not be combined with any other rating for a disability due to cerebral or generalized arteriosclerosis. Ratings in excess of 10 percent for cerebral arteriosclerosis under diagnostic code 9305 are not assignable in the absence of a diagnosis of non-psychotic organic brain syndrome with cerebral arteriosclerosis.	
NOTE. The ratings under code 8046 apply only when the diagnosis of cerebral arteriosclero-	

Organic Diseases of the Central Nervous System—Continued

	Rating
sis is substantiated by the entire clinical picture and not solely on findings of retinal arteriosclerosis.	

Miscellaneous Diseases

	Rating
8100 Migraine:	
With very frequent completely prostrating and prolonged attacks productive of severe economic inadaptability	50
With characteristic prostrating attacks occurring on an average once a month over last several months	30
With characteristic prostrating attacks averaging one in 2 months over last several months	10
With less frequent attacks	0
8103 Tic, convulsive:	
Severe	30
Moderate	10
Mild	0
NOTE. Depending upon frequency, severity, muscle groups involved.	
8104 Paramyoclonus multiplex (convulsive state, myoclonic type):	
Rate as tic; convulsive; severe cases	60
8105 Chorea, Sydenham's:	
Pronounced, progressive grave types	100
Severe	80
Moderately severe	50
Moderate	30
Mild	10
NOTE. Consider rheumatic etiology and complications.	
8106 Chorea, Huntington's.	
Rate as Sydenham's chorea. This, though a familial disease, has its onset in late adult life, and is considered a ratable disability.	
8107 Athetosis, acquired.	
Rate as chorea.	
8108 Narcolepsy.	
Rate as for epilepsy, petit mal.	

Diseases of the Cranial Nerves

	Rating
Disability from lesions of peripheral portions of first, second, third, fourth, sixth, and eighth nerves will be rated under the Organs of Special Sense. The ratings for the cranial nerves are for unilateral involvement; when bilateral, combine but without the bilateral factor.	
Fifth (trigeminal) cranial nerve	
8205 Paralysis of:	
Complete	50
Incomplete, severe	30
Incomplete, moderate	10
NOTE. Dependent upon relative degree of sensory manifestation or motor loss.	
8305 Neuritis.	
8405 Neuralgia.	
NOTE. Tic douloureux may be rated in accordance with severity, up to complete paralysis.	
Seventh (facial) cranial nerve	
8207 Paralysis of:	
Complete	30
Incomplete, severe	20
Incomplete, moderate	10
NOTE. Dependent upon relative loss of innervation of facial muscles.	
8307 Neuritis.	
8407 Neuralgia:	
Ninth (glossopharyngeal) cranial nerve	
8209 Paralysis of:	
Complete	30
Incomplete, severe	20
Incomplete, moderate	10
NOTE. Dependent upon relative loss of ordinary sensation in mucous membrane of the pharynx, fauces, and tonsils.	
8309 Neuritis.	
8409 Neuralgia:	
Tenth (pneumogastric, vagus) cranial nerve	
8210 Paralysis of:	
Complete	50
Incomplete, severe	30
Incomplete, moderate	10
NOTE. Dependent upon extent of sensory and motor loss to organs of voice, respiration, pharynx, stomach and heart.	
8310 Neuritis.	
8410 Neuralgia:	
Eleventh (spinal accessory, external branch) cranial nerve.	
8211 Paralysis of:	
Complete	30
Incomplete, severe	20
Incomplete, moderate	10

DISEASES OF THE CRANIAL NERVES—Continued

	Rating
NOTE. Dependent upon loss of motor function of sternomastoid and trapezius muscles.	
8311 Neuritis.	
8411 Neuralgia:	
Twelfth (hypoglossal) cranial nerve.	
8212 Paralysis of:	
Complete	50
Incomplete, severe	30
Incomplete, moderate	10
NOTE. Dependent upon loss of motor function of tongue.	
8312 Neuritis.	
8412 Neuralgia.	

DISEASES OF THE PERIPHERAL NERVES

	Rating	
	Major	Minor
The term "incomplete paralysis," with this and other peripheral nerve injuries, indicates a degree of lost or impaired function substantially less than the type picture for complete paralysis given with each nerve, whether due to varied level of the nerve lesion or to partial regeneration. When the involvement is wholly sensory, the rating should be for the mild, or at most, the moderate degree. The ratings for the peripheral nerves are for unilateral involvement; when bilateral, combine with application of the bilateral factor.		
Upper radicular group (fifth and sixth cervicals).		
8510 Paralysis of:		
Complete; all shoulder and elbow movements lost or severely affected, hand and wrist movements not affected	70	60
Incomplete:		
Severe	50	40
Moderate	40	30
Mild	20	20
8610 Neuritis.		
8710 Neuralgia.		
Middle radicular group.		
8511 Paralysis of:		
Complete; adduction, abduction and rotation of arm, flexion of elbow, and extension of wrist lost or severely affected	70	60
Incomplete:		
Severe	50	40
Moderate	40	30
Mild	20	20
8611 Neuritis.		
8711 Neuralgia.		
Lower radicular group.		
8512 Paralysis of:		
Complete; all intrinsic muscles of hand, and some or all of flexors of wrist and fingers, paralyzed (substantial loss of use of hand)	70	60

DISEASES OF THE PERIPHERAL NERVES—Continued

	Rating	
	Major	Minor
Incomplete:		
Severe	50	40
Moderate	40	30
Mild	20	20
8612 Neuritis.		
8712 Neuralgia.		
All radicular groups.		
8513 Paralysis of:		
Complete	90	80
Incomplete:		
Severe	70	60
Moderate	40	30
Mild	20	20
8613 Neuritis.		
8713 Neuralgia.		
The musculospiral nerve (radial nerve).		
8514 Paralysis of:		
Complete; drop of hand and fingers, wrist and fingers perpetually flexed, the thumb adducted falling within the line of the outer border of the index finger; can not extend hand at wrist, extend proximal phalanges of fingers, extend thumb, or make lateral movement of wrist; supination of hand, extension and flexion of elbow weakened, the loss of synergic motion of extensors impairs the hand grip seriously; total paralysis of the triceps occurs only as the greatest rarity	70	60
Incomplete:		
Severe	50	40
Moderate	30	20
Mild	20	20
8614 Neuritis.		
8714 Neuralgia.		
NOTE. Lesions involving only "dissociation of extensor communis digitorum" and "paralysis below the extensor communis digitorum," will not exceed the moderate rating under code 8514.		
The median nerve.		
8515 Paralysis of:		
Complete; the hand inclined to the ulnar side, the index and middle fingers more extended than normally, considerable atrophy of the muscles of the thenar eminence, the thumb in the plane of the hand (ape hand); pronation incomplete and defective, absence of flexion of index finger and feeble flexion of middle finger, cannot make a fist, index and middle fingers remain extended; cannot flex distal phalanx of thumb, defective opposition and abduction of the thumb, at right angles to palm; flexion of wrist weakened; pain with trophic disturbances	70	60
Incomplete:		
Severe	50	40
Moderate	30	20
Mild	10	10
8615 Neuritis.		
8715 Neuralgia.		

DISEASES OF THE PERIPHERAL NERVES—Continued

	Rating	
	Major	Minor
The ulnar nerve.		
8516 Paralysis of:		
Complete; the "griffin claw" deformity, due to flexor contraction of ring and little fingers, atrophy very marked in dorsal interspace and thenar and hypothenar eminences, loss of extension of ring and little fingers cannot spread the fingers (or reverse), cannot adduct the thumb; flexion of wrist weakened	60	50
Incomplete:		
Severe	40	30
Moderate	30	20
Mild	10	10
8616 Neuritis.		
8716 Neuralgia.		
Musculocutaneous nerve.		
8517 Paralysis of:		
Complete; weakness but not loss of flexion of elbow and supination of forearm	30	20
Incomplete:		
Severe	20	20
Moderate	10	10
Mild	0	0
8617 Neuritis.		
8717 Neuralgia.		
Circumflex nerve.		
8518 Paralysis of:		
Complete; abduction of arm is impossible, outward rotation is weakened; muscles supplied are deltoid and teres minor	50	40
Incomplete:		
Severe	30	20
Moderate	10	10
Mild	0	0
8618 Neuritis.		
8718 Neuralgia.		
Long thoracic nerve.		
8519 Paralysis of:		
Complete; inability to raise arm above shoulder level, winged scapular deformity	30	20
Incomplete:		
Severe	20	20
Moderate	10	10
Mild	0	0
NOTE: Not to be combined with lost motion above shoulder level.		
8619 Neuritis.		
8719 Neuralgia.		
NOTE: Combined nerve injuries should be rated by reference to the major involvement, or if sufficient in extent, consider radicular group ratings.		
Sciatic nerve.		
8520 Paralysis of:		
Complete; the foot dangles and drops, no active movement possible of muscles below the knee, flexion of knee weakened or (very rarely) lost		80
Incomplete:		
Severe, with marked muscular atrophy		60
Moderately severe		40
Moderate		20
Mild		10
8620 Neuritis.		
8720 Neuralgia.		
External popliteal nerve (common peroneal).		
8521 Paralysis of:		
Complete; foot drop and slight droop of first phalanges of all toes, cannot dorsiflex the foot, extension (dorsal flexion) of proximal phalanges of toes lost; abduction of foot lost, adduction weakened; anesthesia covers entire dorsum of foot and toes.		40
Incomplete:		
Severe		30
Moderate		20
Mild		10
8621 Neuritis.		
8721 Neuralgia.		
Musculocutaneous nerve (superficial peroneal).		
8522 Paralysis of:		
Complete; eversion of foot weakened		30
Incomplete:		
Severe		20
Moderate		10
Mild		0
8622 Neuritis.		
8722 Neuralgia.		
Anterior tibial nerve (deep peroneal).		
8523 Paralysis of:		
Complete; dorsal flexion of foot lost		30
Incomplete:		
Severe		20
Moderate		10
Mild		0
8623 Neuritis.		
8723 Neuralgia.		
Internal popliteal nerve (tibial).		
8524 Paralysis of:		
Complete; plantar flexion lost, frank adduction of foot impossible, flexion and separation of toes abolished; no muscle in sole can move; in lesions of the nerve high in popliteal fossa		40
Incomplete:		
Severe		30
Moderate		20
Mild		10
8624 Neuritis.		
8724 Neuralgia.		
Posterior tibial nerve.		
8525 Paralysis of:		
Complete; paralysis of all muscles of sole of foot, frequently with painful paralysis of a causalgic nature; toes cannot be flexed; adduction is weakened; plantar flexion is impaired		30
Incomplete:		
Severe		20
Moderate		10
Mild		10
8625 Neuritis.		
8725 Neuralgia.		
Anterior crural nerve (femoral).		
8526 Paralysis of:		

Diseases of the Peripheral Nerves—Continued

	Rating	
	Major	Minor
Complete; paralysis of quadriceps extensor muscles		40
Incomplete:		
Severe		30
Moderate		20
Mild		10
8626 Neuritis.		
8726 Neuralgia.		
Internal saphenous nerve.		
8527 Paralysis of:		
Severe to complete		10
Mild or Moderate		0
8627 Neuritis.		
8727 Neuralgia.		
Obturator nerve.		
8528 Paralysis of:		
Severe to complete		10
Mild or Moderate		0
8628 Neuritis.		
8728 Neuralgia.		
External cutaneous nerve of thigh.		
8529 Paralysis of:		
Severe to complete		10
Mild or Moderate		0
8629 Neuritis.		
8729 Neuralgia.		
Ilio-inguinal nerve.		
8530 Paralysis of:		
Severe to complete		10
Mild or Moderate		0
8630 Neuritis.		
8730 Neuralgia.		

The Epilepsies

	Rating
A thorough study of all material in §§ 4.121 and 4.122 of the preface and under the ratings for epilepsy is necessary prior to any rating action.	
8910 Epilepsy, grand mal.	
Rate under the general rating formula for major seizures.	
8911 Epilepsy, petit mal.	
Rate under the general rating formula for minor seizures.	
NOTE (1). A major seizure is characterized by the generalized tonic-clonic convulsion with unconsciousness.	
NOTE (2). A minor seizure consists of a brief interruption in consciousness or conscious control associated with staring or rhythmic blinking of the eyes or nodding of the head ("pure" petit mal), or sudden jerking movements of the arms, trunk, or head (myoclonic type) or sudden loss of postural control (akinetic type).	
General Rating Formula for Major and Minor Epileptic Seizures:	
Averaging at least 1 major seizure per month over the last year	100

The Epilepsies—Continued

	Rating
Averaging at least 1 major seizure in 3 months over the last year; or more than 10 minor seizures weekly	80
Averaging at least 1 major seizure in 4 months over the last year; or 9-10 minor seizures per week	60
At least 1 major seizure in the last 6 months or 2 in the last year; or averaging at least 5 to 8 minor seizures weekly	40
At least 1 major seizure in the last 2 years; or at least 2 minor seizures in the last 6 months	20
A confirmed diagnosis of epilepsy with a history of seizures	10
NOTE (1). When continuous medication is shown necessary for the control of epilepsy, the minimum evaluation will be 10 percent. This rating will not be combined with any other rating for epilepsy.	
NOTE (2). In the presence of major and minor seizures, rate the predominating type.	
NOTE (3). There will be no distinction between diurnal and nocturnal major seizures.	
8912 Epilepsy, Jacksonian and focal motor or sensory.	
8913 Epilepsy, diencephalic.	
Rate as minor seizures, except in the presence of major and minor seizures, rate the predominating type.	
8914 Epilepsy, psychomotor.	
Major seizures:	
Psychomotor seizures will be rated as major seizures under the general rating formula when characterized by automatic states and/or generalized convulsions with unconsciousness.	
Minor seizures:	
Psychomotor seizures will be rated as minor seizures under the general rating formula when characterized by brief transient episodes of random motor movements, hallucinations, perceptual illusions, abnormalities of thinking, memory or mood, or autonomic disturbances.	

Mental Disorders in Epilepsies: A nonpsychotic organic brain syndrome will be rated separately under the appropriate diagnostic code (e.g., 9304 or 9307). In the absence of a diagnosis of non-psychotic organic psychiatric disturbance (psychotic, psychoneurotic or personality disorder) if diagnosed and shown to be secondary to or directly associated with epilepsy will be rated separately. The psychotic or psychroneurotic disorder will be rated under the appropriate diagnostic code. The personality disorder will be rated as a non-psychotic organic brain syndrome (e.g., diagnostic code 9304 or 9307).

Epilepsy and Unemployability: (1) Rating specialists must bear in mind that the epileptic, although his or her seizures are controlled, may find employment and rehabilitation difficult of attainment due to employer reluctance to the hiring of the epileptic.

(2) Where a case is encountered with a definite history of unemployment, full and complete development should be undertaken to ascertain whether the epilepsy is the determining factor in his or her inability to obtain employment.

(3) The assent of the claimant should first be obtained for permission to conduct this economic and social survey. The purpose of this survey is to secure all the relevant facts and data necessary to permit of a true judgment as to the reason for his or her unemployment and should include information as to:

(a) Education;

(b) Occupations prior and subsequent to service;

(c) Places of employment and reasons for termination.
(d) Wages received.
(e) Number of seizures.
(4) Upon completion of this survey and current examination, the case should have rating board consideration. Where in the judgment of the rating board the veteran's unemployability is due to epilepsy and jurisdiction is not vested in that body by reason of schedular evaluations, the case should be submitted to the Director, Compensation and Pension Service.

[29 FR 6718, May 22, 1964, as amended at 40 FR 42540, Sept. 15, 1975; 41 FR 11302, Mar. 18, 1976; 43 FR 45362, Oct. 2, 1978]

Mental Disorders

§ 4.125 General considerations.

The field of mental disorders represents the greatest possible variety of etiology, chronicity and disabling effects, and requires differential consideration in these respects. These sections under mental disorders are concerned with the rating of psychiatric conditions and specifically psychotic, psychoneurotic and psychophysiologic disorders, as well as mental disorders accompanying organic brain disease. Advances in modern psychiatry during and since World War II have been rapid and profound and have extended to the entire medical profession a better understanding of and deeper insight into the etiological factors, psychodynamics, and psychopathological changes which occur in mental disease and emotional disturbances. The psychiatric nomenclature employed is based upon the Diagnostic and Statistical Manual of Mental Disorders, 1968 Edition, American Psychiatric Association. It limits itself to the classification of disturbances of mental functioning. To comply with the fundamental requirements for rating psychiatric conditions, it is imperative that rating personnel familiarize themselves thoroughly with this manual (American Psychiatric Association Manual, 1968 Edition) which will be hereinafter referred to as the APA manual.

[41 FR 34258, Aug. 13, 1976]

§ 4.126 Substantiation of diagnosis.

It must be established first that a true mental disorder exists. The disorder will be diagnosed in accordance with the APA manual. A diagnosis not in accord with this manual is not acceptable for rating purposes and will be returned through channels to the examiner. Normal reactions of discouragement, anxiety, depression, and self-concern in the presence of physical disability, dissatisfaction with work environment, difficulties in securing employment, etc., must not be accepted by the rating board as indicative of psychoneurosis. Moreover, mere failure of social or industrial adjustment or the presence of numerous complaints should not, in the absence of definite symptomatology typical of a psychoneurotic or psychophysiologic disorder, become the acceptable basis of a diagnosis in this field. It is the responsibility of rating boards to accept or reject diagnoses shown on reports of examination. If a diagnosis is not supported by the findings shown on the examination report, it is incumbent upon the board to return the report for clarification.

§ 4.127 Mental deficiency and personality disorders.

Mental deficiency and personality disorders will not be considered as disabilities under the terms of the schedule. Attention is directed to the outline of personality disorders in the APA manual. Formal psychometric tests are essential in the diagnosis of mental deficiency. Brief emotional outbursts or periods of confusion are not unusual in mental deficiency or personality disorders and are not acceptable as the basis for a diagnosis of psychotic reaction. However, properly diagnosed superimposed psychotic reactions developing after enlistment, i.e., mental deficiency with psychotic reaction or personality disorder with psychotic reaction, are to be considered as disabilities analogous to, and ratable as, schizophrenic reaction, unless otherwise diagnosed.

[41 FR 34258, Aug. 13, 1976]

§ 4.128 Change of diagnosis.

Rating boards encountering a change of diagnosis will exercise caution in the determination as to whether a change in diagnosis represents no more than a progression of an earlier diagnosis, an error in a prior diagnosis, or possibly a disease entity independent of the service-connected psychiatric disorder.

§ 4.129 Social inadaptability.

Social integration is one of the best evidences of mental health and reflects the ability to establish (together with the desire to establish) healthy and effective interpersonal relationships. Poor contact with other human beings may be an index of emotional illness. However, in evaluating impairment resulting from the ratable psychiatric disorders, social inadaptability is to be evaluated only as it affects industrial adaptability. The principle of social and industrial inadaptability as the basic criterion for rating disability from the mental disorders contemplates those abnormalities of conduct, judgment, and emotional reactions which affect economic adjustment, i.e., which produce impairment of earning capacity.

§ 4.130 Evaluation of psychiatric disability.

The severity of disability is based upon actual symptomatology, as it affects social and industrial adaptability. Two of the most important determinants of disability are time lost from gainful work and decrease in work efficiency. The rating board must not underevaluate the emotionally sick veteran with a good work record, nor must it overevaluate his or her condition on the basis of a poor work record not supported by the psychiatric disability picture. It is for this reason that great emphasis is placed upon the full report of the examiner, descriptive of actual symptomatology. The record of the history and complaints is only preliminary to the examination. The objective findings and the examiner's analysis of the symptomatology are the essentials. The examiner's classification of the disease as "mild," "moderate," or "severe" is not determinative of the degree of disability, but the report and the analysis of the symptomatology and the full consideration of the whole history by the rating agency will be. In evaluating disability from psychotic reactions it is necessary to consider, in addition to present symptomatology or its absence, the frequency, severity, and duration of previous psychotic periods, and the veteran's capacity for adjustment during periods of remission. Repeated psychotic periods, without long remissions, may be expected to have a sustained effect upon employability until elapsed time in good remission and with good capacity for adjustment establishes the contrary. Ratings are to be assigned which represent the impairment of social and industrial adaptability based on all of the evidence of record. Evidence of material improvement in psychotic reactions disclosed by field examination or social survey should be utilized in determinations of competency, but the fact will be borne in mind that a person who has regained competency may still be unemployable, depending upon the level of his or her disability as shown by recent examinations and other evidence of record.

§ 4.131 Mental disorders incurred during war.

Certain mental disorders having their onset as an incident of battle or enemy action, or following bombing, shipwreck, imprisonment, exhaustion, or prolonged operational fatigue may at the outset be designated as gross stress reaction, "combat fatigue," "exhaustion," or any one of a number of special terms. These conditions may clear up entirely, permitting return to full or limited duty, or they may persist as one of the recognized mental disorders, particularly psychoneurotic reaction. If the mental disorder is sufficiently severe to warrant discharge from service, a minimum rating of 50 percent will be assigned with an examination to be scheduled within 6 months from discharge.

§ 4.132 Schedule of ratings—mental disorders.

PSYCHOTIC DISORDERS

		Rating
9200	Schizophrenia, simple type	
9201	Schizophrenia, hebephrenic type	
9202	Schizophrenia, catatonic type	
9203	Schizophrenia, paranoid type	
9204	Schizophrenia, chronic undifferentiated type	
9205	Schizophrenia, other and unspecified types	
9206	Manic depressive illness, specify type	
9207	Psychotic depressive reaction	
9208	Paranoid states (specify type)	
9209	Involutional melancholia or involutional paranoid state	

PSYCHOTIC DISORDERS—Continued

	Rating
9210 Psychosis, unspecified:	
General Rating Formula for Psychotic Reactions:	
Active psychotic manifestations of such extent, severity, depth, persistence or bizarreness as to produce complete social and industrial inadaptability	100
With lesser symptomatology such as to produce severe impairment of social and industrial adaptability	70
Considerable impairment of social and industrial adaptability	50
Definite impairment of social and industrial adaptability	30
Slight impairment of social and industrial adaptability	10
Psychosis in full remission	0
Convalescent rating in psychotic disorders: Upon regular discharge or release to non-bed care from a hospital where a beneficiary has been under care and treatment for a continuous period in the hospital of not less than 6 months, an open rating of 100 percent will be continued for 6 months. A Veterans Administration examination is mandatory at the expiration of the 6 months period, after which the condition will be rated in accordance with the degree of disability shown. Where the beneficiary has been under hospital care and treatment for less than 6 months and is not ratable at 100 percent under the rating schedule, consideration should be given to § 4.29	

ORGANIC BRAIN DISORDERS

	Rating
9300 Acute nonpsychotic brain disorder with infection, trauma, circulatory disturbance, etc. (specify the cause).	
Note: Acute organic brain disorders with or without accompanying psychotic disorder are temporary and reversible. If psychiatric impairment attributable to such diagnosis continues beyond 6 months, the report of examination is to be returned to the examiner for reconsideration of the diagnosis.	
9301 Non-psychotic organic brain syndrome with central nervous system syphilis (all forms).	
9302 Non-psychotic organic brain syndrome with intracranial infections other than syphilis (specify infection).	
9303 Non-psychotic organic brain syndrome with intoxication (specify cause such as alcoholic deterioration).	
9304 Non-phychotic organic brain syndrome with brain trauma.	
9305 Non-psychotic organic brain syndrome with cerebral arteriosclerosis.	

ORGANIC BRAIN DISORDERS—Continued

	Rating
9306 Non-psychotic organic brain syndrome with circulatory disturbance other than cerebral arteriosclerosis (specify circulatory disturbance).	
9307 Non-psychotic organic brain syndrome with convulsive disorder (idiopathic epilepsy).	
9308 Non-psychotic organic brain syndrome with disturbance of metabolism, growth or nutrition.	
9309 Non-psychotic organic brain syndrome with intracranial neoplasm.	
9310 Non-psychotic organic brain syndrome with unknown or uncertain cause.	
9311 Non-psychotic organic brain syndrome of undiagnosed cause.	
9312 Psychosis associated with organic brain syndrome due to senile dementia.	
9313 Psychosis associated with organic brain syndrome due to chronic alcoholic poisoning.	
9314 Psychosis associated with organic brain syndrome due to syphilis (all forms).	
9315 Psychosis associated with organic brain syndrome due to epidemic encephalitis.	
9316 Psychosis associated with organic brain syndrome due to other and unspecified intracranial infection.	
9317 Psychosis associated with organic brain syndrome due to cerebral arteriosclerosis.	
9318 Psychosis associated with organic brain syndrome due to cerebrovascular disturbance.	
9319 Psychosis associated with organic brain syndrome due to epilepsy.	
9320 Psychosis associated with organic brain syndrome due to intracranial neoplasm.	
9321 Psychosis associated with organic brain syndrome due to brain trauma.	
9322 Psychosis associated with organic brain syndrome due to endocrine disorder.	
9323 Psychosis associated with organic brain syndrome due to metabolic or nutritional disorder.	
9324 Psychosis associated with organic brain syndrome due to systemic infection.	
9325 Psychosis associated with organic brain syndrome due to drug or poison intoxication (other than alcohol).	
9326 Psychosis associated with organic brain syndrome due to other and undiagnosed physical condition.	
Before attempting to rate brain syndromes, rating specialists should become thoroughly acquainted with the relevant concepts presented by the current Diagnostic and Statistical Manual of the American Psychiatric Association and the following:	
(1) Under the codes 9300 through 9326 the basic syndrome of organic brain disorder may be the only mental disturbance present or it may appear with related "psychotic" manifestations. An organic brain syndrome with or without such qualifying phrase will be rated according to the general rating formula for organic brain syndromes, assigning a rating which reflects the entire psychiatric picture.	

ORGANIC BRAIN DISORDERS—Continued

	Rating
(2) An organic brain syndrome, as defined in the American Psychiatric Association manual, is characterized solely by psychiatric manifestations. However, neurological or other manifestations of etiology common to the brain syndrome may be present, and if present, are to be rated separately as distinct entities under the neurological or other appropriate system and combined with the rating for the brain syndrome.	
General Rating Formula for Organic Brain Syndromes:	
Impairment of intellectual functions, orientation, memory and judgment, and liability and shallowness of affect of such extent, severity, depth, and persistence as to produce complete social and industrial inadaptability	100
Less than 100 percent, in symptom combinations productive of:	
Severe impairment of social and industrial adaptability	70
Considerable impairment of social and industrial adaptability	50
Definite impairment of social and industrial adaptability	30
Slight impairment of social and industrial adaptability	10
No impairment of social and industrial adaptability	0

PSYCHONEUROTIC DISORDERS

	Rating
9400 Anxiety neurosis.	
9401 Hysterical neurosis, dissociative type.	
9402 Hysterical neurosis, conversion type.	
9403 Phobic neurosis.	
9404 Obsessive compulsive neurosis.	
9405 Depressive neurosis.	
9406 [Revoked]	
9407 Neurasthenic neurosis (formerly psychophysiologic nervous system reaction)	
9408 Depersonalization neurosis.	
9409 Hypochondriacal neurosis.	
9410 Other and unspecified neurosis.	
Read well notes (1) to (4) following general rating formula before applying the general rating formula.	
General Rating Formula for Psychoneurotic Disorders:	
The attitudes of all contacts except the most intimate are so adversely affected as to result in virtual isolation in the community. Totally incapacitating psychoneurotic symptoms bordering on gross repudiation of reality with disturbed thought or behavioral processes associated with almost all daily activities such as	

PSYCHONEUROTIC DISORDERS—Continued

	Rating
phantasy, confusion, panic and explosions of agressive energy resulting in profound retreat from mature behavior. Demonstrably unable to obtain or retain employment	100
Ability to establish and maintain effective or favorable relationships with people is seriously impaired. The psychoneurotic symptoms are of such severity and persistence that there is pronounced impairment in the ability to obtain or retain employment	70
Ability to establish or maintain effective or favorable relationships with people is substantially impaired. By reason of psychoneurotic symptoms the reliability, flexibility and efficiency levels are so reduced as to result in severe industrial impairment	50
Definite impairment in the ability to establish or maintain effective and wholesome relationships with people. The psychoneurotic symptoms result in such reduction in initiative, flexibility, efficiency and reliability levels as to produce considerable industrial impairment	30
Less than criteria for the 30 percent, with emotional tension or other evidence of anxiety productive of moderate social and industrial impairment	10
There are neurotic symptoms which may somewhat adversely affect relationships with others but which do not cause impairment of working ability	0

NOTE (1). Social impairment per se will not be used as the sole basis for any specific percentage evaluation, but is of value only in substantiating the degree of disability based on all of the findings.

NOTE (2). The requirements for a compensable rating are not met when the psychiatric findings are not more characteristic than minor alterations of mood beyond normal limits; fatigue or anxiety incident to actual situations; minor compulsive acts or phobias; occasional stuttering or stammering; minor habit spasms or tics; minor subjective sensory disturbances such as anosmia, deafness, loss of sense of taste, anesthesia, paresthesia, etc. When such findings actually interfere with employability to a moderate degree, a 10 percent rating under the general rating formula may be assigned.

NOTE (3). It is to be emphasized that vague complaints are not to be erected into a concept of conversion reaction. A disagnosis of conversion reaction must be established on the basis of specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of conversion reaction if found by the rating board to be inadequately supported by findings, the report of examination will be returned through channels to the examiner for reconsideration.

PSYCHONEUROTIC DISORDERS—Continued

	Rating
NOTE (4). When two diagnoses, one organic and the other psychophysiologic or psychoneurotic, are presented covering the organic and psychiatric aspects of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychophysiologic or psychoneurotic categories, the condition will be rated under the new diagnosis.	
9411 Post-traumatic stress neurosis (disorder)	

PSYCHOPHYSIOLOGIC DISORDERS

	Rating
9500 Psychophysiologic skin disorder	
9501 Psychophysiologic cardiovascular disorder	
9502 Psychophysiologic gastrointestinal disorder	
9503 [Revoked]	
9504 [Revoked]	
9505 Psychophysiologic musculoskeletal disorder	
9506 Psychophysiologic respiratory disorder	
9507 Psychophysiologic hemic and lymphatic disorder	
9508 Psychophysiologic genitourinary disorder	
9509 Psychophysiologic endocrine disorder	
9510 Psychophysiologic disorder of organ of special sense (specify sense organ)	
9511 Psychophysiologic disorder of other type.	
Evaluate psychophysiologic reaction by the general rating formula for psychoneurotic disorders.	
NOTE (1). It is to be emphasized that vague complaints are not to be erected into a concept of psychophysiologic disorder. A diagnosis of a psychophysiologic reaction must be established on specific distinctive findings characteristic of such disturbance and not merely by exclusion of organic disease. If a diagnosis of a psychophysiologic reaction is found by the rating board to be inadequately supported by findings, the report of examination will be returned.	
NOTE (2). When two diagnoses, one organic and the other psychophysiologic or psychoneurotic, are presented covering the organic and psychiatric aspects of a single disability entity, only one percentage evaluation will be assigned under the appropriate diagnostic code determined by the rating board to represent the major degree of disability. When the diagnosis of the same basic disability is changed from an organic one to one in the psychophysiologic or psychoneurotic categories, the condition will be rated under the new diagnosis.	

[29 FR 6718, May 22, 1964, as amended at 40 FR 42541, Sept. 15, 1975; 41 FR 11302, Mar. 18, 1976; 45 FR 26327, Apr. 18, 1980]

DENTAL AND ORAL CONDITIONS

§ 4.150 Schedule of ratings—dental and oral conditions.

	Rating
9900 Maxilla or mandible, osteomyelitis of, chronic:	
Rate as osteomyelitis, chronic under diagnostic code 5000.	
9901 Mandible, loss of, complete, between angles	100
9902 Mandible, loss of approximately one-half:	
Involving temporomandibular articulation	50
Not involving temporomandibular articulation	30
9903 Mandible, nonunion of:	
Severe	30
Moderate	10
NOTE. Dependent upon degree of motion and relative loss of masticatory function.	
9904 Mandible, malunion of:	
Severe displacement	20
Moderate displacement	10
Slight displacement	0
NOTE. Dependent upon degree of motion and relative loss of masticatory function.	
9905 Temporomandibular articulation, limited motion of:	
Motion limited to ¼ inch (6.3 mm.)	40
Motion limited to ½ inch (12.7 mm.)	20
Any definite limitation, interfering with mastication or speech	10
9906 Ramus, loss of whole or part of:	
Involving loss of temporomandibular articulation:	
Bilateral	50
Unilateral	30
Not involving loss of temporomandibular articulation:	
Bilateral	30
Unilateral	20
9907 Ramus, loss of less than one-half the substance of, not involving loss of continuity:	
Bilateral	20
Unilateral	10
9908 Condyloid process, loss of, one or both sides	30
9909 Coronoid process, loss of:	
Bilateral	20
Unilateral	10
9910 Maxilla, loss of whole or part of substance of, nonunion of, or malunion of:	
Rate as for similar disabilities of mandible.	
9911 Hard palate, loss of half or more:	
Not replaceable by prosthetic appliance	30
Replaceable by prosthetic appliance	10
9912 Hard palate, loss of less than half of:	
Not replaceable by prosthetic appliance	20
Replaceable by prosthetic appliance	0
9913 Teeth, loss of, due to loss of substance of body of maxilla or mandible:	
Not involving loss of continuity, but where the lost masticatory surface cannot be restored by suitable prosthesis, when involving—	
Loss of all teeth	40
Loss of all upper teeth only	30
Loss of all lower teeth only	30
Loss of one-half masticatory surface—	
The median line being the point of division	10
All missing teeth being posterior	20
All upper and lower anterior teeth missing	20
All lower anterior teeth missing	10
All upper anterior teeth missing	10

	Rating
Not involving loss of continuity, but where the lost masticatory surface can be restored by suitable prosthesis	0
NOTE. These ratings contemplate loss of body of bone only through trauma or disease such as osteomyelitis. They do not contemplate loss of the alveolar process through natural resorption.	
Carious teeth, treatable	0
Missing teeth, replaceable	0
Dento-alveolar abscess	0
Pyorrhea alveolaris	0
Vincent's stomatitis	0

[29 FR 6718, May 22, 1964, as amended at 43 FR 45362, Oct. 2, 1978]

APPENDIX A—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

Sec	
4.16	Last sentence; March 1, 1963.
4.17	October 7, 1948.
4.17a	March 1, 1963.
4.29	Introductory portion preceding paragraph (a); March 1, 1963.
	Paragraph (a) "first day of continuous hospitalization"; April 8, 1959.
	Paragraph (a) "terminated last day of month"; December 1, 1962.
	Paragraph (a) penultimate sentence; November 13, 1970.
	Paragraph (b); April 8, 1959.
	Paragraph (c); August 16, 1948.
	Paragraph (d); August 16, 1948.
	Paragraph (e); March 1, 1963.
	Paragraph (f); August 9, 1976.
	NOTE. Application of this section to psychoneurotic and psychophysiologic disorders effective October 1, 1961.
4.30	Introductory portion of paragraph (a) preceding subparagraph (1); July 6, 1950.
	Paragraph (a)(1); June 9, 1952.
	Paragraph (a)(2); June 9, 1952.
	Paragraph (a)(3); June 9, 1952. Effective as to outpatient treatment March 10, 1976.
	Paragraph (b)(1); March 1, 1963.
	Paragraph (b)(2); August 9, 1976.
4.55	Paragraph (b) first sentence; March 1, 1963.
4.63	June 17, 1948.
4.64	October 1, 1956.
4.71a	Diagnostic Code 5000—60 percent; February 1, 1962.
	Diagnostic Code 5000 NOTE (2):
	First three sentences; July 10, 1956.
	Last sentence; July 6, 1950.
	Diagnostic Code 5002—100 percent, 60 percent, 40 percent, 20 percent; March 1, 1963.
	Diagnostic Code 5003; July 6, 1950.
	Diagnostic Code 5012—NOTE; March 10, 1976.
	In sentence following DC 5024 "except gout which will be rated under 5002"; March 1, 1963.
	Diagnostic Code 5051;
	Diagnostic Code 5052;
	Diagnostic Code 5053;

APPENDIX A—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

Sec.	
	Diagnostic Code 5054; September 9, 1975.
	Diagnostic Code 5055; September 9, 1975.
	Diagnostic Code 5056;
	Diagnostic Code 5164—60 percent; June 9, 1952.
	Diagnostic Code 5172; July 6, 1950.
	Diagnostic Code 5173; June 9, 1952.
	Diagnostic Code 5255 "or hip"; July 6, 1950.
	Diagnostic Code 5257—Evaluation; July 6, 1950.
	Diagnostic Code 5297—(Removal of one rib) "or resection of 2 or more"; August 23, 1948.
	Diagnostic Code 5297—NOTE (2): Reference to lobectomy; pneumonectomy and graduated ratings; February 1, 1962.
	Diagnostic Code 5298; August 23, 1948.
4.73	Diagnostic Code 5324; February 1, 1962.
	Diagnostic Code 5327; March 10, 1976.
	Diagnostic Code 5328; March 10, 1976.
4.78	Last sentence; December 1, 1963.
4.84a	Diagnostic Code 6029—Note; August 23, 1948.
	Diagnostic Code 6035; September 9, 1975.
	Diagnostic Code 6076—60%: Vision 1 eye 15/200 and other eye 20/100; August 23, 1948.
	Diagnostic Code 6080—Note—"as to 38 U.S.C. 314(L)"; July 6, 1950.
	Diagnostic Code 6081—Words "unilateral", "minimal" and all of Note; March 10, 1976.
4.84b	Diagnostic Code 6260—As to tinnitus due to arteriosclerosis.
	DC 8046; October 1, 1961.
	10% Evaluation and Criterion; March 10, 1976.
4.85	March 23, 1956.
4.86	March 23, 1956.
4.86a	March 23, 1956.
4.87a	Diagnostic Codes 6277 through 6297; March 23, 1956.
4.88a	Diagnostic Code 6304—Notes (1) and (2); August 23, 1948.
	Diagnostic Code 6309; March 1, 1963.
	Diagnostic Code 6350; 80% Evaluation and Criterion for 60% and 30% Evaluations; March 10, 1976. Other Evaluations and Note; March 1, 1963.
4.89	Ratings for nonpulmonary TB, December 1, 1949.
4.97	Diagnostic Code 6600—100% Evaluations and Criteria for 60%, September 9, 1975.
	Diagnostic Code 6602—Criteria for all Evaluations and Note; September 9, 1975.
	Diagnostic Code 6603; September 9, 1975.
	Second note following Diagnostic Code 6724; December 1, 1949.
	Diagnostic Code 6802—Criteria for all Evaluations; September 9, 1975.
	Diagnostic Code 6819—Note; March 10, 1976.
	Diagnostic Code 6821—Evaluations and Note; August 23, 1948.
4.104	Diagnostic Code 7000—30 percent; July 6, 1950.
	Diagnostic Code 7000—100 percent inactive "with signs of congestive failure upon any exertion beyond rest in bed" revoked;
	Diagnostic Code 7005—80 percent revoked;
	Diagnostic Code 7007—80 percent revoked;
	Diagnostic Code 7015—100 percent Evaluation. Criteria for All Evaluations and NOTES (1) and (2); September 9, 1975.
	Diagnostic Code 7016; September 9, 1975.
	Diagnostic Code 7017;
	Diagnostic Code 7100—20 percent; July 6, 1950.
	Diagnostic Code 7101 "or more"; September 1, 1960.

APPENDIX A—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

Sec.	
	Diagnostic Code 7101—NOTE (2); September 9, 1975.
	Diagnostic Code 7110—Criteria for 100 percent, NOTE and 60 percent and 20 percent Evaluations; September 9, 1975.
	Diagnostic Code 7111—NOTE; September 9, 1975.
	Diagnostic Codes 7114, 7115, 7116, and NOTE; June 9, 1952.
	Diagnostic Code 7117 and NOTE; June 9, 1952.
	NOTE following Diagnostic Code 7120; July 6, 1950.
	Diagnostic Code 7121—100 percent Criterion and Evaluation and 60 percent Criterion; March 10, 1976. Criteria for 30 percent and 10 percent and NOTE; July 6, 1950.
	Last sentence of NOTE following Diagnostic Code 7122; July 6, 1950.
4.114	Diagnostic Codes 7304 and 7305—Evaluations, November 1, 1962.
	Diagnostic Code 7308—Evaluations, April 8, 1959.
	Diagnostic Code 7312—70% Evaluation and 50% Evaluation and Criterion; March 10, 1976.
	Diagnostic Code 7313—20% Evaluation; March 10, 1976.
	Diagnostic Code 7319—Evaluations; November 1, 1962.
	Diagnostic Code 7321—Evaluations and Note; July 6, 1950.
	Diagnostic Code 7328—Evaluations and Note; November 1, 1962.
	Diagnostic Code 7329—Evaluations and Note; November 1, 1962.
	Diagnostic Code 7330—60% Evaluation; November 1, 1962.
	Diagnostic Code 7332—60% Evaluation; November 1, 1962.
	Diagnostic Code 7334—50% and 30% Evaluations; July 6, 1950.
	Diagnostic Code 7334—10% Evaluation; November 1, 1962.
	Diagnostic Code 7339—Criterion for 20% Evaluation; March 10, 1976.
	Diagnostic Code 7343—Note; March 10, 1976.
	Diagnostic Code 7345—100%, 60% and 30% Evaluations; August 23, 1948.
	Diagnostic Code 7345—10% Evaluation; February 17, 1955.
	Diagnostic Code 7345—10% Evaluation; February 17, 1955.
	Diagnostic Code 7346—Evaluations; February 1, 1962.
	Diagnostic Code 7347; September 9, 1975.
	Diagnostic Code 7348; March 10, 1976.
4.115a	Diagnostic Code 7500—Note; July 6, 1950.
	Diagnostic Code 7519—20%, 40% and 60% Evaluations; March 10, 1976.
	Diagnostic Code 7524—Note; July 6, 1950.
	Diagnostic Code 7528—Note; March 10, 1976.
	Diagnostic Code 7530; September 9, 1975.
	Diagnostic Code 7531; September 9, 1975.
4.116a	Diagnostic Code 7627—Note; March 10, 1976.
4.117	Diagnostic Code 7703—Evaluations; August 23, 1948.
	Diagnostic Code 7709—Note; March 10, 1976. Evaluations; June 9, 1952.
	Diagnostic Code 7714; September 9, 1975.
4.118	Diagnostic Code 7801—Note (2); July 6, 1950.
	Diagnostic Code 7804—Note; July 6, 1950.

APPENDIX A—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

Sec.	
4.119	Diagnostic Code 7911—Evaluations and Note; March 1, 1963.
	Diagnostic Code 7913—Note; September 9, 1975.
	Diagnostic Code 7914—Note; March 10, 1976.
4.122	October 1, 1961.
4.124a	Diagnostic Code 8002, NOTE;
	Diagnostic Code 8021, NOTE;
	Diagnostic Code 8045; October 1, 1961.
	Diagnostic Code 8046; October 1, 1961.
	Diagnostic Code 8100—Evaluations; June 9, 1953.
	Diagnostic Codes 8910 through 8914; October 1, 1961.
	Diagnostic Codes 8910 through 8914 General Rating Formula—Criteria and Evaluations; September 9, 1975.
4.125–4.132	All Diagnostic Codes under Mental Disorders; October 1, 1961, except as to evaluation for Diagnostic Codes 9500 through 9511; September 9, 1975.

[29 FR 6718, May 22, 1964, as amended at 34 FR 5064, Mar. 11, 1969; 40 FR 42541, Sept. 15, 1975; 41 FR 11291, Mar. 18, 1976; 41 FR 34258, Aug. 13, 1976; 43 FR 45362, Oct. 2, 1978]

APPENDIX B—NUMERICAL INDEX OF DISABILITIES

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
5000	Osteomyelitis, acute, subacute, or chronic.
5001	Bones and Joints, tuberculosis of.
5002	Arthritis, rheumatoid (atrophic).
5003	Arthritis, degenerative, hypertrophic, or osteoarthritis.
5004	Arthritis, gonorrheal.
5005	Arthritis, pneumococcic.
5006	Arthritis, typhoid.
5007	Arthritis, syphilitic.
5008	Arthritis, streptococcic.
5009	Arthritis, other types.
5010	Arthritis, due to trauma.
5011	Bones, caisson disease of.
5012	Bones, new growths of, malignant.
5013	Osteoporosis, with joint manifestations.
5014	Osteomalacia.
5015	Bones, new growths of, benign.
5016	Osteitis deformans.
5017	Gout.
5018	Hydrarthrosis, intermittent.
5019	Bursitis.
5020	Synovitis.
5021	Myositis.
5022	Periostitis.
5023	Myositis ossificans.
5024	Tenosynovitis.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
	COMBINATIONS OF DISABILITIES
5100	Anatomical loss of both hands and both feet.
5101	Loss of use of both hands and both feet.
5102	Anatomical loss of both hands and one foot.
5103	Anatomical loss of both feet and one hand.
5104	Loss of use of both hands and one foot.
5105	Loss of use of both feet and one hand.
5106	Anatomical loss of both hands.
5107	Anatomical loss of both feet.
5108	Anatomical loss of one hand and one foot.
5109	Loss of use of both hands.
5110	Loss of use of both feet.
5111	Loss of use of one hand and one foot.
	AMPUTATIONS: UPPER EXTREMITY
	Arm, amputation of:
5120	Disarticulation.
5121	Above insertion of deltoid.
5122	Below insertion of deltoid.
	Forearm, amputation of:
5123	Above insertion of pronator teres.
5124	Below insertion of pronator teres.
5125	Hand, loss of use of.
5126	Five digits of one hand, amputation of:
	Four digits of one hand, amputation of:
5127	Thumb, index, middle and ring.
5128	Thumb, index, middle and little.
5129	Thumb, index, ring and little.
5130	Thumb, middle, ring and little.
5131	Index, middle, ring and little.
	Three digits of one hand, amputation of:
5132	Thumb, index and middle.
5133	Thumb, index and ring.
5134	Thumb, index and little.
5135	Thumb, middle and ring.
5136	Thumb, middle and little.
5137	Thumb, ring and little.
5138	Index, middle and ring.
5139	Index, middle and little.
5140	Index, ring and little.
5141	Middle, ring and little.
	Two digits of one hand, amputation of:
5142	Thumb and index.
5143	Thumb and middle.
5144	Thumb and ring.
5145	Thumb and little.
5146	Index and middle.
5147	Index and ring.
5148	Index and little.
5149	Middle and ring.
5150	Middle and little.
5151	Ring and little.
5152	Thumb, amputation of.
5153	Index finger, amputation of.
5154	Middle finger, amputation of.
5155	Ring finger, amputation of.
5156	Little finger, amputation of.
	AMPUTATIONS: LOWER EXTREMITY
	Thigh, amputation of:
5160	Disarticulation.
5161	Upper third.
5162	Middle or lower thirds.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
	Leg, amputation of:
5163	With defective stump.
5164	With loss of natural knee action.
5165	At a lower level.
5166	Forefoot, amputation proximal to metatarsal bones.
5167	Foot, loss of use of.
5170	Toes, all, amputation of, without metatarsal loss.
5171	Toe, great, amputation of.
5172	Toe, other, amputation of.
5173	Toes, three or more, amputation of, not including great toe.
	THE SHOULDER AND ARM
5200	Scapulohumeral articulation, ankylosis of.
5201	Arm, limitation of motion of.
5202	Humerus, other impairment of.
5203	Clavicle or scapula, impairment of.
	THE ELBOW AND FOREARM
5205	Elbow, ankylosis of.
5206	Forearm, limitation of flexion of.
5207	Forearm, limitation of extension of.
5208	Forearm, flexion limited to 100° and extension to 45°.
5209	Elbow, other impairment of.
5210	Radius and ulna, nonunion of, with flail false joint.
5211	Ulna, impairment of.
5212	Radius, impairment of.
5213	Supination and pronation, impairment of.
	THE WRIST AND HAND
5214	Wrist, ankylosis.
5215	Wrist, limitation of motion of.
5216	Five digits of one hand, unfavorable ankylosis of.
5217	Four digits of one hand, unfavorable ankylosis of.
5218	Three digits of one hand, unfavorable ankylosis of.
5219	Two digits of one hand, unfavorable ankylosis of.
5220	Five digits of one hand, favorable ankylosis of.
5221	Four digits of one hand, favorable ankylosis of.
5222	Three digits of one hand, favorable ankylosis of.
5223	Two digits of one hand, favorable ankylosis of.
5224	Thumb, ankylosis of.
5225	Index finger, ankylosis of.
5226	Middle finger, ankylosis of.
5227	Finger, any other, ankylosis of.
	THE HIP AND THIGH
5250	Hip, ankylosis of.
5251	Thigh, limitation of extension of.
5252	Thigh, limitation of flexion of.
5253	Thigh, impairment of.
5254	Hip, flail joint.
5255	Femur, impairment of.
	THE KNEE AND LEG
5256	Knee, ankylosis of.
5257	Knee, other impairment of.
5258	Cartilage, semilunar, dislocated.
5259	Cartilage, semilunar, removal of.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
5260	Leg, limitation of flexion of.
5261	Leg, limitation of extension of.
5262	Tibia and fibula, impairment of.
5263	Genu recurvatum.
	THE ANKLE
5270	Ankle, ankylosis of.
5271	Ankle, limited motion of.
5272	Subastragalar or tarsal joint, ankylosis of.
5273	Os calcis or astragalus, malunion of.
5274	Astragalectomy.
	SHORTENING OF THE LOWER EXTREMITY
5275	Bones, of the lower extremity, shortening of.
	THE FOOT
5276	Flatfoot, acquired.
5277	Weak foot, bilateral.
5278	Claw foot (pes cavus), acquired.
5279	Metatarsalgia, anterior (Morton's disease).
5280	Hallux valgus.
5281	Hallux rigidus.
5282	Hammer toe.
5283	Tarsal, or metatarsal bones, malunion of, or non-union of.
5284	Foot injuries, other.
	THE SPINE
5285	Vertebra, fracture of, residuals.
5286	Spine, complete bony fixation (ankylosis) of.
5287	Spine, ankylosis of, cervical.
5288	Spine, ankylosis of, dorsal.
5289	Spine, ankylosis of, lumbar.
5290	Spine, limitation of motion of, cervical.
5291	Spine, limitation of motion of, dorsal.
5292	Spine, limitation of motion of, lumbar.
5293	Intervertebral disc syndrome.
5294	Sacroiliac injury and weakness.
5295	Lumbosacral strain.
	THE SKULL
5296	Skull, loss of part of, both inner and outer tables.
	THE RIBS
5297	Ribs, removal of.
	THE COCCYX
5298	Coccyx, removal of.
	MUSCLE INJURIES
5301	Group I—Extrinsic muscles of shoulder girdle.
5302	Group II—Extrinsic muscles of shoulder girdle.
5303	Group III—Intrinsic muscles of shoulder girdle.
5304	Group IV—Intrinsic muscles of shoulder girdle.
5305	Group V—Flexor muscles of the elbow.
5306	Group VI—Extensor muscles of the elbow.
5307	Group VII—Muscles arising from internal condyle of humerus.
5308	Group VIII—Muscles arising mainly from external condyle of humerus.
5309	Group IX—Intrinsic muscles of the hand.
5310	Group X—Intrinsic muscles of the foot.
5311	Group XI—Posterior and lateral muscles of the leg.
5312	Group XII—Anterior muscles of the leg.
5313	Group XIII—Posterior thigh group.
5314	Group XIV—Anterior thigh group.
5315	Group XV—Mesial thigh group.
5316	Group XVI—Pelvic girdle group 1.
5317	Group XVII—Pelvic girdle group 2.
5318	Group XVIII—Pelvic girdle group 3.
5319	Group XIX—Muscles of the abdominal wall.
5320	Group XX—Spinal muscles.
5321	Group XXI—Muscles of respiration.
5322	Group XXII—Lateral, supra and infrahyoid group.
5323	Group XXIII—Lateral and posterior muscles of the neck.
5324	Diaphragm, rupture of.
5325	Muscle injury, facial muscles.
5326	Muscle hernia.
	DISEASES OF THE EYE
6000	Uveitis.
6001	Keratitis.
6002	Scleritis.
6003	Iritis.
6004	Cyclitis.
6005	Choroiditis.
6006	Retinitis.
6007	Hemorrhage, intra-ocular, recent.
6008	Retina, detachment of.
6009	Eye, injury of, unhealed.
6010	Eye, tuberculosis of.
6011	Retina, localized scars.
6012	Glaucoma, congestive or inflammatory.
6013	Glaucoma, simple, primary, noncongestive.
6014	New growths, malignant, eyeball.
6015	New growths, benign, eyeball and adnexa.
6016	Nystagmus, central.
6017	Conjunctivitis, trachomatous, chronic.
6018	Conjunctivitis, other, chronic.
6019	Ptosis, eyelids.
6020	Ectropion.
6021	Entropion.
6022	Lagophthalmos.
6023	Eyebrows, loss of.
6024	Eyelashes, loss of.
6025	Epiphora.
6026	Neuritis, optic.
6027	Cataract, traumatic.
6028	Cataract, senile, and others.
6029	Aphakia.
6030	Accommodation, paralysis of.
6031	Dacryocystitis.
6032	Eyelids, loss of portion of.
6033	Lens, crystalline, dislocation of.
6034	Pterygium.
	COMBINATIONS OF DISABILITIES
6050	Blindness in both eyes having only light perception and anatomical loss of both hands and both feet.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
6051	Blindness in both eyes having only light perception and loss of use of both hands and both feet.
6052	Blindness in both eyes having only light perception and anatomical loss of both hands.
6053	Blindness in both eyes having only light perception and anatomical loss of both feet.
6054	Blindness in both eyes having only light perception and anatomical loss of one hand and one foot.
6055	Blindness in both eyes having only light perception and loss of use of both hands.
6056	Blindness in both eyes having only light perception and loss of use of both feet.
6057	Blindness in both eyes having only light perception and loss of use of one hand and one foot.
6058	Blindness in both eyes having only light perception and anatomical loss of one hand.
6059	Blindness in both eyes having only light perception and anatomical loss of one foot.
6060	Blindness in both eyes having only light perception and loss of use of one hand.
6061	Blindness in both eyes having only light perception and loss of use of one foot.
6062	Blindness in both eyes having only light perception.
	IMPAIRMENT OF CENTRAL VISUAL ACUITY
	Blindness, anatomical loss, one eye:
6063	Other blind (5/200 or less).
6064	Other impaired (20/200 or less).
6065	Other impaired.
6066	Other normal.
	Blindness, light perception only one eye:
6067	Other blind (5/200 or less).
6068	Other impaired (20/200 or less).
6069	Other impaired.
6070	Other normal.
	Blindness, total (5/200 or less):
6071	Both eyes.
	Blindness, total one eye (5/200 or less):
6072	Other impaired (20/200 or less).
6073	Other impaired.
6074	Other normal.
	Blindness, partial (20/200 or less):
6075	Both eyes.
	One eye:
6076	Other impaired.
6077	Other normal.
	Blindness, partial:
6078	Both eyes.
6079	One eye only.
6080	Field vision, impairment of.
6081	Scotoma, pathological.
6090	Muscle function, ocular, impairment of.
6091	Symblepharon.
6092	Diplopia, due to limited muscle function.
	DISEASES OF THE EAR
6200	Otitis media, suppurative, chronic.
6201	Otitis media, catarrhal, chronic.
6202	Otosclerosis.
6203	Otitis interna.
6204	Labyrinthitis.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
6205	Meniere's syndrome.
6206	Mastoiditis.
6207	Auricle, loss or deformity.
6208	New growths, malignant, ear.
6209	New growths, benign, ear.
6210	Auditory canal, disease of.
6211	Tympanic membrane, perforation of.
6260	Tinnitus.
	OTHER SENSE ORGANS
6275	Smell, loss of sense of.
6276	Taste, loss of sense of.
	IMPAIRMENT OF AUDITORY ACUITY
6277	Rated Colm. F, One Ear Row F, Other Ear Table II.
6278	Rated Colm. F, One Ear Row E, Other Ear Table II.
6279	Rated Colm. F, One Ear Row D, Other Ear Table II.
6280	Rated Colm. F, One Ear Row C, Other Ear Table II.
6281	Rated Colm. F, One Ear Row B, Other Ear Table II.
6282	Rated Colm. F, One Ear Row A, Other Ear Table II.
6283	Rated Colm. E, One Ear Row E, Other Ear Table II.
6284	Rated Colm. E, One Ear Row D, Other Ear Table II.
6285	Rated Colm. E, One Ear Row C, Other Ear Table II.
6286	Rated Colm. E, One Ear Row B, Other Ear Table II.
6287	Rated Colm. E, One Ear Row A, Other Ear Table II.
6288	Rated Colm. D, One Ear Row D, Other Ear Table II.
6289	Rated Colm. D, One Ear Row C, Other Ear Table II.
6290	Rated Colm. D, One Ear Row B, Other Ear Table II.
6291	Rated Colm. D, One Ear Row A, Other Ear Table II.
6292	Rated Colm. C, One Ear Row C, Other Ear Table II.
6293	Rated Colm. C, One Ear Row B, Other Ear Table II.
6294	Rated Colm. C, One Ear Row A, Other Ear Table II.
6295	Rated Colm. B, One Ear Row B, Other Ear Table II.
6296	Rated Colm. B, One Ear Row A, Other Ear Table II.
6297	Rated Colm. A, One Ear Row A, Other Ear Table II.
	SYSTEMIC DISEASES
6300	Cholera, Asiatic.
6301	Kala-azar (visceral leishmaniasis).
6302	Leprosy.
6304	Malaria.
6305	Filariasis.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
6306	Oroya fever.
6307	Plague.
6308	Relapsing fever.
6309	Rheumatic fever.
6310	Syphilis, unspecified.
6311	Tuberculosis, military.
6313	Avitaminosis.
6314	Beriberi.
6315	Pellagra.
6316	Brucellosis (Malta or undulant fever).
6317	Typhus, scrub.
6350	Lupus erythematosus, systemic.
	RESPIRATORY SYSTEM
	THE NOSE AND THROAT
6501	Rhinitis, atrophic, chronic.
6502	Septum, nasal, deflection of.
6504	Nose, loss of part of, or scars.
6510	Sinusitis, pansinusitis, chronic.
6511	Sinusitis, ethmoid, chronic.
6512	Sinusitis, frontal, chronic.
6513	Sinusitis, maxillary, chronic.
6514	Sinusitis, sphenoid, chronic.
6515	Laryngitis, tuberculous.
6516	Laryngitis, chronic.
6517	Larynx, injuries of, healed.
6518	Laryngectomy.
6519	Aphonia, organic.
6520	Larynx, stenosis of.
	THE TRACHEA AND BRONCHI
6600	Bronchitis, chronic.
6601	Bronchiectasis.
6602	Asthma, bronchial.
	THE LUNGS AND PLEURA
6701	Tuberculosis, pulmonary, chronic, far advanced, active.
6702	Tuberculosis, pulmonary, chronic, moderately advanced, active.
6703	Tuberculosis, pulmonary, chronic, minimal, active.
6704	Tuberculosis, pulmonary, chronic, active, advancement unspecified.
6707	Tuberculosis, pulmonary, chronic, far advanced, active.
6708	Tuberculosis, pulmonary, chronic, moderately advanced, active.
6709	Tuberculosis, pulmonary, chronic, minimal, active.
6710	Tuberculosis, pulmonary, chronic, active, advancement unspecified.
6721	Tuberculosis, pulmonary, chronic, far advanced, inactive.
6722	Tuberculosis, pulmonary, chronic, moderately advanced, inactive.
6723	Tuberculosis, pulmonary, chronic, minimal, inactive.
6724	Tuberculosis, pulmonary, chronic, inactive, advancement unspecified.
6725	Tuberculosis, pulmonary, chronic, far advanced, inactive.
6726	Tuberculosis, pulmonary, chronic, moderately advanced, inactive.
6727	Tuberculosis, pulmonary, chronic, minimal, inactive.
6728	Tuberculosis, pulmonary, chronic, inactive, advancement unspecified.
6732	Pleurisy, tuberculous.
6800	Anthracosis.
6801	Silicosis.
6802	Pneumoconiosis, unspecified.
6803	Actinomycosis of lung.
6804	Streptotrichosis of lung.
6805	Blastomycosis of lung.
6806	Sporotrichosis of lung.
6807	Aspergillosis of lung.
6808	Mycosis of lung, unspecified.
6809	Lung, abscess of.
6810	Pleurisy, serofibrinous.
6811	Pleurisy, purulent (empyema).
6812	Fistula, bronchocutaneous, or bronchopleural.
6813	Lung, permanent collapse of.
6814	Pneumothorax, spontaneous.
6815	Pneumonectomy.
6816	Lobectomy.
6817	Lung, chronic passive congestion of.
6818	Pleural cavity, injuries, residuals of, including gunshot wounds.
6819	New growths, malignant, any specified part of respiratory system.
6820	New growths, benign, any specified part of respiratory system.
6821	Coccidioidomycosis.
	THE CARDIOVASCULAR SYSTEM
	THE HEART
7000	Rheumatic heart disease.
7001	Endocarditis, bacterial, subacute.
7002	Pericarditis, bacterial or rheumatic, acute.
7003	Adhesions, pericardial.
7004	Syphilitic heart disease.
7005	Arteriosclerotic heart disease.
7006	Myocardium, infarction of, due to thrombosis or embolism.
7007	Hypertensive heart disease.
7008	Hyperthyroid heart disease.
7010	Auricular flutter, paroxysmal.
7011	Auricular fibrillation, paroxysmal.
7012	Auricular fibrillation, permanent.
7013	Tachycardia, paroxysmal.
7014	Sinus tachycardia.
7015	Auriculoventricular block.
	THE ARTERIES AND VEINS
7100	Arteriosclerosis, general.
7101	Hypertensive vascular disease (essential arterial hypertension).
7110	Aorta or branches, aneurysm of.
7111	Artery, any large artery, aneurysm of.
7112	Artery, small aneurysmal dilatation.
7113	Arteriovenous aneurysm, traumatic.
7114	Arteriosclerosis obliterans.
7115	Thrombo-angiitis obliterans (Buerger's disease).
7116	Claudication, intermittent.
7117	Raynaud's disease.
7118	Angioneurotic edema.

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APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
7119	Erythromelalgia.
7120	Varicose veins.
7121	Phlebitis.
7122	Frozen feet, residuals of (Immersion foot).
	THE DIGESTIVE SYSTEM
7200	Mouth, injuries of.
7201	Lips, injuries of.
7202	Tongue, loss of, whole or part.
7203	Esophagus, stricture of.
7204	Esophagus, spasm of (cardiospasm).
7205	Esophagus, diverticulum of, acquired.
7301	Peritoneum, adhesions of.
7304	Ulcer, gastric.
7305	Ulcer, duodenal.
7306	Ulcer, marginal (gastrojejunal).
7307	Gastritis, hypertrophic.
7308	Postgastrectomy syndromes.
7309	Stomach, stenosis of.
7310	Stomach, injury of, residuals.
7311	Liver, injury of.
7312	Liver, cirrhosis of.
7313	Liver, abscess of, residuals.
7314	Cholecystitis, chronic.
7315	Cholelithiasis, chronic.
7316	Cholangitis, chronic.
7317	Gall bladder, injury of.
7318	Gall bladder, removal of.
7319	Irritable colon syndrome (spastic colitis, mucous colitis, etc.)
7321	Amebiasis.
7322	Dysentery, bacillary.
7323	Colitis, ulcerative.
7324	Distomiasis, intestinal or hepatic.
7325	Enteritis, chronic.
7326	Enterocolitis, chronic.
7327	Diverticulitis.
7328	Intestine, small, resection of.
7329	Intestine, large, resection of.
7330	Intestine, fistula of.
7331	Peritonitis, tuberculous, active.
7332	Rectum and anus, impairment of sphincter control.
7333	Rectum and anus, stricture of.
7334	Rectum, persistent prolapse of.
7335	Ano, fistula in.
7336	Hemorrhoids, external or internal.
7337	Pruritus ani.
7338	Hernia, inguinal.
7339	Hernia, ventral.
7340	Hernia, femoral.
7341	Wounds, incised, healed, abdominal wall.
7342	Visceroptosis.
7343	New growths, malignant, any specified part of digestive system.
7344	New growths, benign, any specified part of digestive system.
7345	Hepatitis, infectious.
7346	Hernia, hiatal.
	THE GENITOURINARY SYSTEM
7500	Kidney, removal of.
7501	Kidney, abscess of.
7502	Nephritis, chronic.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
7503	Pyelitis.
7504	Pyelonephritis, chronic.
7505	Kidney, tuberculosis of, active.
7507	Nephrosclerosis, arteriolar.
7508	Nephrolithiasis.
7509	Hydronephrosis.
7510	Ureterolithiasis.
7511	Ureter, stricture of.
7512	Cystitis, chronic.
7513	Cystitis, interstitial (Hunner), submucous or elusive ulcer.
7514	Bladder, tuberculosis of.
7515	Bladder, calculus in.
7516	Bladder, fistula of.
7517	Bladder, injury of.
7518	Urethra, stricture of.
7519	Urethra, fistula of.
7520	Penis, removal of half or more.
7521	Penis, removal of glans.
7522	Penis, deformity, with loss of erectile power.
7523	Testis, atrophy, complete.
7524	Testis, removal of.
7525	Epididymo-orchitis (tuberculous).
7526	Prostate gland, resection or removal.
7527	Prostate gland injuries, infectious hypertrophy, postoperative residuals.
7528	New growths, malignant, any specified part of genitourinary system.
7529	New growths, benign, any specified part of genitourinary system.
	GYNECOLOGICAL CONDITIONS
7610	Vulvovaginitis.
7611	Vaginitis.
7612	Cervicitis.
7613	Metritis.
7614	Salpingitis.
7615	Oophoritis.
7617	Uterus and ovaries, removal of, complete.
7618	Uterus, removal of, including corpus.
7619	Ovaries, removal of.
7620	Ovaries, atrophy of both.
7621	Uterus, prolapse.
7622	Uterus, displacement of.
7623	Pregnancy, surgical complications of.
7624	Fistula, rectovaginal.
7625	Fistula, urethrovaginal.
7626	Mammary glands, removal of.
7627	New growth, malignant, gynecological system, or mammary glands.
	THE HEMIC AND LYMPHATIC SYSTEMS
7700	Anemia, pernicious.
7701	Anemia, secondary.
7702	Agranulocytosis, acute.
7703	Leukemia.
7704	Polycythemia, primary.
7705	Purpura hemorrhagica.
7706	Splenectomy.
7707	Spleen, injury of, healed.
7709	Lymphogranulomatosis (Hodgkin's disease).
7710	Adenitis, cervical, tuberculous.
7711	Adenitis, axillary, tuberculous.
7712	Adenitis, inguinal, tuberculous.
7713	Adenitis, secondary.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
	THE SKIN
7800	Scars, disfiguring, head, face or neck.
7801	Scars, burns, third degree.
7802	Scars, burns, second degree.
7803	Scars, superficial, poorly nourished.
7804	Scars, superficial, tender and painful.
7805	Scars, others.
7806	Eczema.
7807	Leishmaniasis, americana (mucocutaneous, espundia).
7808	Leishmaniasis, old world (cutaneous, oriental sore).
7809	Lupus erythematosus, discoid.
7810	Pinta.
7811	Tuberculosis luposa (lupus vulgaris).
7812	Verruga peruana.
7813	Dermatophytosis.
7814	Tinea barbae.
7815	Pemphigus.
7816	Psoriasis.
7817	Dermatitis exfoliativa.
7818	New growths, malignant, skin.
7819	New growths, benign, skin.
	THE ENDOCRINE SYSTEM
7900	Hyperthyroidism.
7901	Thyroid gland, toxic adenoma of.
7902	Thyroid gland, non-toxic adenoma of.
7903	Hypothyroidism.
7904	Hyperparathyroidism (osteitis fibrosa cystica).
7905	Hypoparathyroidism.
7907	Hyperpituitarism (pituitary basophilism, Cushing's syndrome).
7908	Hyperpituitarism (acromegaly or gigantism).
7909	Hypopituitarism (diabetes insipidus).
7910	Hyperadrenia (adrenogenital syndrome).
7911	Addison's disease.
7912	Pluriglandular syndromes.
7913	Diabetes mellitus.
7914	New growths, malignant, endocrine system.
7915	New growths, benign, endocrine system.
	NEUROLOGICAL CONDITIONS AND CONVULSIVE DISORDERS
8000	Encephalitis, epidemic, chronic.
	Brain, new growth of:
8002	Malignant.
8003	Benign.
8004	Paralysis agitans.
8005	Bulbar palsy.
8007	Brain, vessels, embolism of.
8008	Brain, vessels, thrombosis of.
8009	Brain, vessels, hemorrhage from.
8010	Myelitis.
8011	Poliomyelitis, anterior.
8012	Hematomyelia.
8013	Syphilis, cerebrospinal.
8014	Syphilis, meningovascular.
8015	Tabes dorsalis.
8017	Amyotrophic lateral sclerosis.
8018	Multiple sclerosis.
8019	Meningitis, cerebrospinal, epidemic.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
8020	Brain, abscess of. Spinal cord, new growths:
8021	Malignant.
8022	Benign.
8023	Progressive muscular atrophy.
8024	Syringomyelia.
8025	Myasthenia gravis.
8045	Brain disease due to trauma.
8046	Cerebral arteriosclerosis.
8100	Migraine.
8103	Tic, convulsive.
8104	Paramyoclonus multiplex (convulsive state, myoclonic type).
8105	Chorea, Sydenham's.
8106	Chorea, Huntington's.
8107	Athetosis, acquired.
8108	Narcolepsy.
	THE CRANIAL NERVES
8205	Fifth (trigeminal) cranial nerve, paralysis of.
8207	Seventh (facial) cranial nerve, paralysis of.
8209	Ninth (glossopharyngeal) cranial nerve, paralysis of.
8210	Tenth (pneumogastric, vagus) cranial nerve, paralysis of.
8211	Eleventh (spinal accessory, external branch) cranial nerve, paralysis of.
8212	Twelfth (hypoglossal) cranial nerve, paralysis of.
8305	Fifth (trigeminal) cranial nerve, neuritis.
8307	Seventh (facial) cranial nerve, neuritis.
8309	Ninth (glossopharyngeal) cranial nerve, neuritis.
8310	Tenth (pneumogastric, vagus) cranial nerve, neuritis.
8311	Eleventh (spinal accessory, external branch) cranial nerve, neuritis.
8312	Twelfth (hypoglossal) cranial nerve, neuritis.
8407	Seventh (facial) cranial nerve, neuralgia.
8409	Ninth (glossopharyngeal) cranial nerve, neuralgia.
8410	Tenth (pneumogastric, vagus) cranial nerve, neuralgia.
8411	Eleventh (spinal accessory, external branch) cranial nerve, neuralgia.
8412	Twelfth (hypoglossal) cranial nerve, neuralgia.
	PERIPHERAL NERVES: PARALYSIS
8510	Upper radicular group (fifth and sixth cervicals), paralysis of.
8511	Middle radicular group, paralysis of.
8512	Lower radicular group, paralysis of.
8513	All radicular groups, paralysis of.
8514	The musculospiral nerve (radial nerve), paralysis of.
8515	The median nerve, paralysis of.
8516	The ulnar nerve, paralysis of.
8517	Musculocutaneous nerve, paralysis of.
8518	Circumflex nerve, paralysis of.
8519	Long thoracic nerve, paralysis of.
8520	The sciatic nerve, paralysis of.
8521	External popliteal nerve (common peroneal), paralysis of.
8522	Musculocutaneous nerve (superficial peroneal), paralysis of.
8523	Anterior tibial nerve (deep peroneal), paralysis of.
8524	Internal popliteal nerve (tibial), paralysis of.
8525	Posterior tibial nerve, paralysis of.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No	
8526	Anterior crural nerve (femoral), paralysis of.
8527	Internal saphenous nerve, paralysis of.
8528	Obturator nerve, paralysis of.
8529	External cutaneous nerve of thigh, paralysis of.
8530	Ilio-inguinal nerve, paralysis of.
	PERIPHERAL NERVES, NEURITIS
8610	Upper radicular group (fifth and sixth cervicals), neuritis.
8611	Middle radicular group, neuritis.
8612	Lower radicular group, neuritis.
8613	All radicular groups, neuritis.
8614	The musculospiral nerve (radial nerve), neuritis.
8615	The median nerve, neuritis.
8616	The ulnar nerve, neuritis.
8617	Musculocutaneous nerve, neuritis.
8618	Circumflex nerve, neuritis.
8619	Long thoracic nerve, neuritis.
8620	The sciatic nerve, neuritis.
8621	External popliteal nerve (common peroneal), neuritis.
8622	Musculocutaneous nerve (superficial peroneal), neuritis.
8623	Anterior tibial nerve (deep peroneal), neuritis.
8624	Internal popliteal nerve (tibial) neuritis.
8625	Posterior tibial nerve, neuritis.
8626	Anterior crural nerve (femoral), neuritis.
8627	Internal saphenous nerve, neuritis.
8628	Obturator nerve, neuritis.
8629	External cutaneous nerve of thigh, neuritis.
8630	Ilio-inguinal nerve, neuritis.
	PERIPHERAL NERVES, NEURALGIA
8710	Upper radicular group (fifth and sixth cervicals), neuralgia.
8711	Middle radicular group, neuralgia.
8712	Lower radicular group, neuralgia.
8713	All radicular groups, neuralgia.
8714	The musculospiral nerve (radial nerve), neuralgia.
8715	The median nerve, neuralgia.
8716	The ulnar nerve, neuralgia.
8717	Musculocutaneous nerve, neuralgia.
8718	Circumflex nerve, neuralgia.
8719	Long thoracic nerve, neuralgia.
8720	The sciatic nerve, neuralgia.
8721	External popliteal nerve (common peroneal), neuralgia.
8722	Musculocutaneous nerve (superficial peroneal), neuralgia.
8723	Anterior tibial nerve (deep peroneal), neuralgia.
8724	Internal popliteal nerve (tibial), neuralgia.
8725	Posterior tibial nerve, neuralgia.
8726	Anterior crural nerve (femoral), neuralgia.
8727	Internal saphenous nerve, neuralgia.
8728	Obturator nerve, neuralgia.
8729	External cutaneous nerve of thigh neuralgia.
8730	Ilio-inguinal nerve, neuralgia.
	THE EPILEPSIES
8910	Epilepsy, grand mal.
8911	Epilepsy, petit mal.
8912	Jacksonian type.
8913	Epilepsy, diencephalic.
8914	Epilepsy, psychomotor.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
	PSYCHOTIC DISORDERS
9200	Schizophrenic reaction, simple type.
9201	Schizophrenic reaction, hebephrenic type.
9202	Schizophrenic reaction, catatonic type.
9203	Schizophrenic reaction, paranoid type.
9204	Schizophrenic reaction, chronic undifferentiated type.
9205	Schizophrenic reaction, other.
9206	Manic depressive reaction.
9207	Psychotic depressive reaction.
9208	Paranoid reaction (specify).
9209	Involutional psychotic reaction.
9210	Psychotic reaction, other.
	ORGANIC BRAIN DISORDERS
9300	Acute brain syndrome (associated with infection, trauma, circulatory disturbance, etc.).
9301	Chronic brain syndrome associated with central nervous system syphilis (all forms).
9302	Chronic brain syndrome associated with intracranial infections other than syphilis.
9303	Chronic brain syndrome associated with intoxication.
9304	Chronic brain syndrome associated with brain trauma.
9305	Chronic brain syndrome associated with cerebral arteriosclerosis.
9306	Chronic brain syndrome associated with circulatory disturbance other than cerebral arteriosclerosis.
9307	Chronic brain syndrome associated with convulsive disorder (idiopathic epilepsy).
9308	Chronic brain syndrome associated with disturbance of metabolism, growth or nutrition.
9309	Chronic brain syndrome associated with intracranial neoplasm.
9310	Chronic brain syndrome associated with diseases of unknown or uncertain cause.
9311	Chronic brain syndrome of unknown cause.
	PSYCHONEUROTIC DISORDERS
9400	Anxiety reaction.
9401	Dissociative reaction.
9402	Conversion reaction.
9403	Phobic reaction.
9404	Obsessive compulsive reaction.
9405	Depressive reaction.
9406	Psychoneurotic reaction, other.
	PSYCHOPHYSIOLOGIC DISORDERS
9500	Psychophysiologic skin reaction.
9501	Psychophysiologic cardiovascular reaction.
9502	Psychophysiologic gastrointestinal reaction.
9503	Psychophysiologic nervous system reaction.
9504	Psychophysiologic reaction, other.
	DENTAL AND ORAL CONDITIONS
9900	Maxilla or mandible, osteomyelitis of.
9901	Mandible, loss of, complete, between angles.

APPENDIX B—NUMERICAL INDEX OF DISABILITIES—Continued

[ACUTE, SUBACUTE, OR CHRONIC DISEASES]

Diagnostic Code No.	
9902	Mandible, loss of approximately one-half.
9903	Mandible, nonunion of.
9904	Mandible, malunion of.
9905	Temporomandibular articulation, limited motion of.
9906	Ramus, loss of whole or part of.
9907	Ramus, loss of less than one-half the substance of, not involving loss of continuity.
9908	Condyloid process, loss of, one or both sides.
9909	Coronoid process, loss of.
9910	Maxilla, loss of whole or part of substance of, nonunion of, or malunion of.
9911	Hard palate, loss of half or more.
9912	Hard palate, loss of less than half of.
9913	Teeth, loss of, due to loss of substance of body of maxilla or mandible.

[29 FR 6718, May 22, 1964, as amended at 34 FR 5064, Mar. 11, 1969]

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES

	Diagnostic Code No.
Abscess:	
Brain	8020
Kidney	7501
Liver	7313
Lung	6809
Actinomycosis, lung	6803
Addison's disease	7911
Adenitis, secondary	7713
Adenoma, thyroid:	
Nontoxic	7902
Toxic	7901
Adhesions:	
Pericardial	7003
Peritoneum	7301
Agranulocytosis	7702
Amebiasis	7321
Amputation:	
Arm:	
Disarticulation	5120
Above deltoid	5121
Below deltoid	5122
Feet, both, and hand, one	5103
Feet, both	5107
Finger (digit) individual:	
Thumb	5152
Index	5153
Middle	5154
Ring	5155
Little	5156
Fingers (digits) of one hand:	
Five	5126
Four, thumb, index, middle, ring	5127
Four, thumb, index, middle, little	5128
Four, thumb, index, ring, little	5129
Four, thumb, middle, ring, little	5130

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Four, index, middle, ring, little	5131
Three, thumb, index, middle	5132
Three, thumb, index, ring	5133
Three, thumb, index, little	5134
Three, thumb, middle, ring	5135
Three, thumb, middle, little	5136
Three, thumb, ring, little	5137
Three, index, middle, ring	5138
Three, index, middle, little	5139
Three, index, ring, little	5140
Three, middle, ring, little	5141
Two, thumb, index	5142
Two, thumb, middle	5143
Two, thumb, ring	5144
Two, thumb, little	5145
Two, index, middle	5146
Two, index, ring	5147
Two, index, little	5148
Two, middle, ring	5149
Two, middle, little	5150
Two, ring, little	5151
Forearm:	
Above pronator teres	5123
Below pronator teres	5124
Forefoot	5166
Hand, one, and foot, one	5108
Hands, both, and feet, both	5100
Hands, both, and foot, one	5102
Hands, both	5106
Leg:	
With defective stump	5163
With loss of natural knee action	5164
At lower level	5165
Thigh:	
Disarticulation	5160
Upper third	5161
Middle or lower thirds	5162
Toe, great	5171
Toe, other, with removal metatarsal head	5172
Toes, all	5170
Toes, three or more	5173
Anemia:	
Pernicious	7700
Secondary	7701
Aneurysm:	
Aorta or branches	7110
Arteriovenous, traumatic	7113
Artery	7111
Angioneurotic edema	7118
Ankylosis:	
Ankle	5270
Elbow	5205
Finger (digit) individual:	
Thumb	5224
Index	5225
Middle	5226
Other	5227
Fingers (digits) of one hand, unfavorable:	
Five	5216
Four	5217
Three	5218
Two	5219
Hip	5250
Knee	5256
Scapulohumeral	5200

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Spine:	
Complete	5286
Cervical	5287
Dorsal	5288
Lumbar	5289
Subastragular or Tarsal	5272
Wrist	5214
Anthracosis	6800
Aphakia	6029
Aphonia, organic	6519
Arteriosclerosis:	
Cerebral	8046
General	7100
Obliterans	7114
Arteriosclerotic heart disease	7005
Arthritis:	
Atrophic (rheumatoid)	5002
Gonorrheal	5004
Hypertrophic (degenerative)	5003
Other types	5009
Pneumococcic	5005
Streptococcic	5008
Syphilitic	5007
Traumatic	5010
Typhoid	5006
Aspergillosis, lung	6807
Asthma, bronchial	6602
Astragalectomy	5274
Athetosis	8107
Atrophy:	
Muscular, progressive	8023
Ovaries, both	7620
Testis, both	7523
Auditory canal, disease	6210
Avitaminosis	6313
Beriberi	6314
Blastomycosis, lung	6805
Blindness, anatomical loss, one eye:	
Other blind (5/200 or less)	6063
Other impaired (20/200 or less)	6064
Other impaired	6065
Other normal	6066
Blindness, light perception only:	
Both eyes	6062
One eye:	
Other blind, 5/200 or less	6067
Other impaired, 20/200 or less	6068
Other impaired	6069
Other normal	6070
Blindness, light perception only and loss or loss of use of hands and/or feet	6050–6061
Blindness, total (5/200 or less):	
Both eyes	6071
One eye:	
Other impaired, (20/200 or less)	6072
Other impaired	6073
Other normal	6074
Blindness, partial (20/200 or less):	
Both eyes	6075
One eye:	
Other impaired	6076
Other normal	6077
Blindness, partial:	
Both eyes	6078
One eye only	6079

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Block, auricular ventricular	7015
Bones, Caisson disease of	5011
Bones and joints, tuberculosis of	5001
Bronchiectasis	6601
Bronchitis	6600
Buerger's disease	7115
Brucellosis	6316
Bursitis	5019
Caisson disease	5011
Calculus, bladder	7515
Cataract:	
Senile and others	6028
Traumatic	6027
Cervicitis	7612
Cholangitis	7316
Cholecystitis	7314
Cholelithiasis	7315
Cholera, Asiatic	6300
Chorea:	
Huntington's	8106
Sydenham's	8105
Choroiditis	6005
Claw-foot (pes cavus) acquired	5278
Cirrhosis of liver	7312
Claudication, intermittent	7116
Coccidioidomycosis	6821
Colitis:	
Mucous (See Colon syndrome, irritable)	7319
Spastic (See Colon syndrome, irritable)	7319
Ulcerative	7323
Collapse, lung, permanent	6813
Colon syndrome, irritable	7319
Congestion, lung, passive	6817
Conjunctivitis:	
Trachomatous	6017
Other	6018
Coccyx	5298
Cushing's syndrome	7907
Cyclitis	6004
Cystitis:	
Chronic	7512
Interstitial (Hunner)	7513
Dacryocystitis	6031
Deafness—Table II:	
Column F, One Ear Row F, Other Ear	6277
Column F, One Ear Row E, Other Ear	6278
Column F, One Ear Row D, Other Ear	6279
Column F, One Ear Row C, Other Ear	6280
Column F, One Ear Row B, Other Ear	6281
Column F, One Ear Row A, Other Ear	6282
Column E, One Ear Row E, Other Ear	6283
Column E, One Ear Row D, Other Ear	6284
Column E, One Ear Row C, Other Ear	6285
Column E, One Ear Row B, Other Ear	6286
Column E, One Ear Row A, Other Ear	6287
Column D, One Ear Row D, Other Ear	6288
Column D, One Ear Row C, Other Ear	6289
Column D, One Ear Row B, Other Ear	6290
Column D, One Ear Row A, Other Ear	6291
Column C, One Ear Row C, Other Ear	6292
Column C, One Ear Row B, Other Ear	6293
Column C, One Ear Row A, Other Ear	6294
Column B, One Ear Row B, Other Ear	6295
Column B, One Ear Row A, Other Ear	6296
Column A, One Ear Row A, Other Ear	6297
Deflection, nasal septum	6502

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Dermatitis, exfoliativa	7817
Dermatophytosis	7813
Diabetes mellitus	7913
Diabetes insipidus	7909
Diaphragm, rupture	5324
Dilation, aneurysmal artery	7112
Diplopia	6090
Disease:	
Addison's	7911
Hodgkin's	7709
Morton's	5279
Raynaud's	7117
Dislocation:	
Cartilage, semilunar	5258
Lens, crystalline	6033
Disorders, mental:	
Organic brain disorders:	
Acute brain syndrome	9300
Chronic brain syndrome associated with:	
Central nervous system syphilis	9301
Intracranial infections other than syphilis	9302
Intoxication	9303
Brain trauma	9304
Cerebral arteriosclerosis	9305
Circulatory disturbance other than cerebral arteriosclerosis	9306
Convulsive disorder (idiopathic epilepsy)	9307
Disturbance of metabolism, growth or nutrition	9308
Intracranial neoplasm	9309
Diseases of unknown or uncertain cause	9310
Unknown cause	9311
Psychoneurotic disorders:	
Anxiety reaction	9400
Dissociative reaction	9401
Conversion reaction	9402
Phobic reaction	9403
Obsessive compulsive reaction	9404
Depressive reaction	9405
Psychoneurotic reaction, other	9406
Psychophysiologic disorders:	
Psychophysiologic skin reaction	9500
Psychophysiologic cardiovascular reaction	9501
Psychophysiologic gastrointestinal reaction	9502
Psychophysiologic nervous system reaction	9503
Psychophysiologic reaction, other	9504
Psychotic disorders:	
Schizophrenic reaction:	
Simple type	9200
Hebephrenic type	9201
Catatonic type	9202
Paranoid type	9203
Chronic undifferentiated type	9204
Other	9205
Manic depressive reaction	9206
Psychotic depressive reaction	9207
Paranoid reaction	9208
Involutional psychotic reaction	9209
Psychotic reaction, other	9210
Distomiasis, intestinal	7324

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Diverticulitis, intestinal	7327
Diverticulum of esophagus	7205
Dupuytren's contracture—*see* Ankylosis, fingers.	
Dysentery, bacillary	7322
Ectropion	6020
Eczema	7806
Edema, angioneurotic	7118
Embolism, brain	8007
Emphysema (No DC; follows DC 6602).	
Encephalitis	8000
Endocarditis, bacterial, subacute	7001
Enteritis	7325
Enterocolitis	7326
Entropion	6021
Enucleation, eye, *see* Blindness.	
Epilepsy:	
Grand mal	8910
Petit mal	8911
Jacksonian	8912
Diencephalic	8913
Psychomotor	8914
Epiphora (lacrymal duct)	6025
Erythromelalgia	7119
Eyelids, loss of portion of	6032
Fever:	
Hemoglobinuric, *see* Malaria.	
Malta	6316
Oroya	6306
Relapsing	6308
Rheumatic	6309
Undulant	6316
Fibrillation, auricular:	
Paroxysmal	7011
Permanent	7012
Filariasis	6305
Fistula:	
Ano	7335
Bladder	7516
Bronchocutaneous or bronchopleural	6812
Intestine	7330
Rectovaginal	7624
Urethra	7625
Flail hip	5254
Flatfoot (pes planus) acquired	5276
Flutter, auricular	7010
Fracture, vertebra, residuals of	5285
Frozen feet	7122
Gastritis, atrophic (*see* DC 7307).	
Gastritis, hypertrophic	7307
Genu, recurvatum	5263
Glaucoma:	
Congestive	6012
Noncongestive	6013
Gout	5017
Growths, new benign:	
Bones, joints and muscles	5015
Brain	8003
Digestive system	7344
Ear	6209
Endocrine system	7915
Eyeball and adnexa	6015
Genitourinary system	7529
Respiratory	6820
Skin	7819
Spinal cord	8022

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Growths, new, malignant:	
Bones	5012
Brain	8002
Digestive system	7343
Ear	6208
Endocrine system	7914
Eyeball only	6014
Genitourinary system	7528
Gynecological system or mammary glands	7627
Respiratory	6819
Skin	7818
Spinal cord	8021
Hallux rigidus	5281
Hallux valgus	5280
Hammer toe	5282
Hematomyelia	8012
Hemorrhage:	
Brain	8009
Intraocular	6007
Hemorrhoids	7336
Hepatitis, infectious	7345
Hernia:	
Femoral	7340
Hiatal	7346
Inguinal	7338
Muscle	5326
Ventral	7339
Hodgkin's disease	7709
Hydrarthrosis, intermittent	5018
Hydronephrosis	7509
Hyperadrenia	7910
Hyperparathyroidism	7904
Hyperpituitarism:	
Acromegaly or gigantism	7908
Cushing's syndrome	7907
Hypertensive heart disease	7007
Hypertensive vascular disease	7101
Hyperthyroid heart disease	7008
Hyperthyroidism	7900
Hypoadrenia	7911
Hypoparathyroidism	7905
Hypopituitarism	7909
Hypothyroidism	7903
Immersion foot	7122
Impairment:	
Auditory acuity, *see* Deafness.	
Clavicle	5203
Elbow	5209
Eye (field vision)	6080
Eye (muscle function)	6090
Femur	5255
Humerus	5202
Knee	5257
Radius	5212
Sphincter control	7332
Supination and pronation	5213
Thigh, motion	5253
Tibia and fibula	5262
Ulna	5211
Visual acuity, *see* Blindness.	
Infarction of myocardium	7006
Injury:	
Bladder	7517
Gall bladder	7317
Eye, unhealed	6009
Foot	5284

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Larynx	6517
Lips	7201
Liver	7311
Mouth	7200
Muscle:	
Facial	5325
Group I	5301
Group II	5302
Group III	5303
Group IV	5304
Group V	5305
Group VI	5306
Group VII	5307
Group VIII	5308
Group IX	5309
Group X	5310
Group XI	5311
Group XII	5312
Group XIII	5313
Group XIV	5314
Group XV	5315
Group XVI	5316
Group XVII	5317
Group XVIII	5318
Group XIX	5319
Group XX	5320
Group XXI	5321
Group XXII	5322
Group XXIII	5323
Pleural cavity	6818
Prostate	7527
Sacroiliac	5294
Spleen	7707
Stomach, residuals	7310
Tongue, whole or part	7202
Intervertebral disc	5293
Iritis	6003
Kala-azar	6301
Keratitis	6001
Labyrinthitis	6204
Lagophthalmos	6022
Laryngectomy	6518
Laryngitis	6516
Leishmaniasis:	
Americana	7807
Old World	7808
Lens, crystalline, dislocation of	6033
Leprosy	6302
Leukemia	7703
Limitation of extension:	
Forearm	5207
Leg	5261
Thigh	5251
Limitation of field vision	6080
Limitation of flexion:	
Forearm	5206
Leg	5260
Thigh	5252
Limitation of flexion and extension:	
Forearm	5208
Limitation of motion:	
Ankle	5271
Arm	5201
Cervical	5290
Dorsal	5291
Lumbar	5292

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Temporomandibular articulation	9905
Wrist	5215
Limitation, pronation	5213
Limitation, supination	5213
Limitation of muscle function, eye	6090
Lobectomy	6816
Loss:	
Auricle or deformity	6207
Condyloid process	9908
Coronoid process	9909
Eyebrows	6023
Eyelashes	6024
Mandible:	
Complete	9901
One-half	9902
Maxilla	9910
Teeth	9913
Nose, loss of part, or scars	6504
Palate, hard:	
Half or more	9911
Less than half	9912
Ramus:	
Less than one-half substance	9907
Whole or part	9906
Skull, part	5296
Smell, sense of	6275
Taste, sense of	6276
Tongue or part	7202
Others, *see* Amputation, removal, etc.	
Loss of use:	
Feet, both	5110
Feet, both, and hand, one	5105
Foot, one	5167
Hand, one	5125
Hand, one, and foot, one	5111
Hands, both, and feet, both	5101
Hands, both, and foot, one	5104
Hands, both	5109
Lupus, erythematosus, discoid	7809
Lupus, erythematosus systemic (disseminated)	6350
Lupus, vulgaris	7811
Lymphogranulomatosis	7709
Malaria	6304
Malunion:	
Clavicle	5203
Os calcis (or astragalus)	5273
Mandible	9904
Maxilla (or nonunion)	9910
Scapula	5203
Tarsal or metatarsal (or nonunion)	5283
Others, *see* Impairment.	
Mastoiditis	6206
Meniere's disease	6205
Meningitis, cerebrospinal	8019
Mental disorders—*see* Disorders, mental.	
Metatarsalgia	5279
Metritis	7613
Migraine	8100
Muscle injury, *see* Injury, muscle.	
Myasthenia gravis	8025
Mycosis, lung, unspecified	6808
Myelitis	8010
Myositis	5021
Myositis ossificans	5023
Narcolepsy	8108
Nephritis, chronic	7502

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Nephrolithiasis	7508
Nephrosclerosis, arteriolar	7507
Neuralgia:	
Cranial nerves:	
Fifth (trigeminal)	8405
Seventh (facial)	8407
Ninth (glossopharyngeal)	8409
Tenth (pneumogastric, vagus)	8410
Eleventh (spinal accessory, external branch)	8411
Twelfth (hypoglossal)	8412
Peripheral nerves:	
Upper radicular group	8710
Middle radicular group	8711
Lower radicular group	8712
All radicular groups	8713
Musculospiral	8714
Median	8715
Ulnar	8716
Musculocutaneous	8717
Circumflex	8718
Long thoracic	8719
Sciatic	8720
External popliteal	8721
Musculocutaneous (superficial peroneal)	8722
Anterior tibial	8723
Internal popliteal	8724
Posterior tibial	8725
Anterior crural	8726
Internal saphenous	8727
Obturator	8728
External cutaneous, thigh	8729
Ilio-inguinal	8730
Neuritis, optic	6026
Neuritis:	
Cranial nerves:	
Fifth (trigeminal)	8305
Seventh (facial)	8307
Ninth (glossopharyngeal)	8309
Tenth (pneumogastric, vagus)	8310
Eleventh (spinal accessory, external branch)	8311
Twelfth (hypoglossal)	8312
Peripheral:	
Upper radicular group	8610
Middle radicular group	8611
Lower radicular group	8612
All radicular groups	8613
Musculospiral	8614
Median	8615
Ulnar	8616
Musculocutaneous	8617
Circumflex	8618
Long thoracic	8619
Sciatic	8620
External popliteal	8621
Musculocutaneous (superficial peroneal)	8622
Anterior tibial	8623
Internal popliteal	8624
Posterior tibial	8625
Anterior crural	8626
Internal saphenous	8627
Obturator	8628
External cutaneous, thigh	8629
Ilio-inguinal	8630

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Non-union of bones:	
Mandible	9903
Radius and Ulna	5210
Tibia and fibula	5262
Others, *see* Impairment.	
Nystagmus, central	6016
Oophoritis	7615
Oroya fever	6306
Osteitis deformans	5016
Osteomalacia	5014
Osteomyelitis, jaw	9900
Osteomyelitis	5000
Osteoporosis	5013
Otitis externa	6210
Otitis interna	6203
Otitis media:	
Catarrhal	6201
Suppurative	6200
Otosclerosis	6202
Palsy, bulbar	8005
Paralysis:	
Accommodation	6030
Agitans	8004
Paralysis, nerve:	
Cranial:	
Fifth (trigeminal)	8205
Seventh (facial)	8207
Ninth (glossopharyngeal)	8209
Tenth (pneumogastric, vagus)	8210
Eleventh (spiral accessory, external branch)	8211
Twelfth (hypoglossal)	8212
Peripheral:	
Upper radicular group	8510
Middle radicular group	8511
Lower radicular group	8512
All radicular groups	8513
Musculospiral	8514
Median	8515
Ulnar	8516
Musculocutaneous	8517
Circumflex	8518
Long thoracic	8519
Sciatic	8520
External popliteal	8521
Musculocutaneous (superficial peroneal)	8522
Anterior tibial	8523
Internal popliteal	8524
Posterior tibial	8525
Anterior crural	8526
Internal saphenous	8527
Obturator	8528
External cutaneous, thigh	8529
Ilio-inguinal	8530
Paramyoclonus multiplex	8104
Pellagra	6315
Pemphigus	7815
Penis, deformity of	7522
Perforation: Tympanic membrane	6211
Pericarditis	7002
Periostitis	5022
Pes cavus	5278
Pes planus	5276
Phlebitis	7121
Pinta	7810
Plague	6307

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Pleurisy:	
Purulent (empyema)	6811
Serofibrinous	6810
Pluriglandular syndrome	7912
Pneumoconiosis	6802
Pneumonectomy	6815
Pneumothorax, spontaneous	6814
Poliomyelitis, anterior	8011
Polycythemia	7704
Pregnancy, surgical complications of	7623
Prolapse:	
Rectum	7334
Uterus	7621
Pronation, limitation of	5213
Pruritis, ani	7337
Psoriasis	7816
Psychiatric disorders, *see* Disorders, mental.	
Pterygium	6034
Ptosis, eyelid	6019
Purpura, hemorrhagica	7705
Pyelitis	7503
Pyelonephritis, chronic	7504
Raynaud's disease	7117
Removal:	
Auricle or deformity	6207
Cartilage, semilunar	5259
Coccyx	5298
Gall bladder	7318
Kidney	7500
Mammary glands	7626
Ovaries, both	7619
Penis, half or more	7520
Penis, glans	7521
Prostate, or resection	7526
Ribs	5297
Testis	7524
Uterus	7618
Uterus and ovaries	7617
Others, *see* Amputation, loss, etc.	
Resection:	
Intestine:	
Large	7329
Small	7328
Stomach	7308
Retina, detachment of	6008
Retinitis	6006
Rheumatic fever	6309
Rheumatic heart disease	7000
Rhinitis: Atrophic	6501
Rupture, diaphragm	5324
Salpingitis	7614
Scars:	
Burns, second degree	7802
Burns, third degree	7801
Head, etc., disfiguring	7800
Retina	6011
Superficial, tender	7804
Superficial, with ulceration	7803
Others	7805
Scleritis	6002
Sclerosis:	
Amyotrophic, lateral	8017
Multiple	8018
Scotoma, pathological	6081
Shortening, leg	5275
Silicosis	6801

APPENDIX C—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic Code No.
Sinusitis:	
Ethmoid	6511
Frontal	6512
Maxillary	6513
Pansinusitis	6510
Sphenoid	6514
Spasm, esophagus	7204
Splenectomy	7706
Sporotrichosis, lung	6806
Stenosis:	
Larynx	6520
Stomach	7309
Strain, lumbosacral	5295
Streptotrichosis, lung	6804
Stricture:	
Esophagus	7203
Rectum, anus	7333
Ureter	7511
Urethra	7518
Supination, limitation of	5213
Symblepharon	6091
Syndrome:	
Cushing's	7907
Intervertebral disc	5293
Meniere's	6205
Pluriglandular	7912
Postgastrectomy	7308
Synovitis	5020
Syphilis:	
Cerebrospinal	8013
Meningovascular	8014
Unspecified	6310
Syphilitic heart disease	7004
Syringomyelia	8024
Tabes dorsalis	8015
Tachycardia:	
Paroxysmal	7013
Sinus	7014
Tenosynovitis	5024
Thrombo-anglitis obliterans	7115
Thrombophlebitis	7121
Thrombosis, brain	8008
Tic, convulsive	8103
Tinea barbae	7814
Tinnitus	6260
Tuberculosis:	
Adenitis, tuberculous:	
Axillary	7711
Cervical	7710
Inguinal	7712
Bladder	7514
Bones and joints	5001
Epididymo-orchitis, tuberculous	7525
Eye	6010
Kidney	7505
Laryngitis, tuberculous	6515
Luposa	7811
Miliary	6311
Nonpulmonary, inactive (see § 4.89)	
Peritonitis, tuberculous	7331
Pleurisy, tuberculous	6732
Pulmonary:	
Active:	
Far advanced	6701 & 6707
Moderately advanced	6702 & 6708
Minimal	6703 & 6709
Advancement unspecified	6704 & 6710
Inactive:	
Far advanced	6721 & 6725
Moderately advanced	6722 & 6726
Minimal	6723 & 6727
Advancement unspecified	6724 & 6728
Tympanic membrane, perforation of	6211
Typhus, scrub	6317
Ulcer:	
Duodenal	7305
Gastric	7304
Marginal	7306
Undescended testis (*see* Note under DC 7524).	
Uterus, displacement of	7622
Ureterolithiasis	7510
Uveitis	6000
Vaginitis	7611
Varicose veins	7120
Verruga peruana	7812
Vertebra, fracture	5285
Visceroptosis	7342
Vision, impairment of, *see* Blindness.	
Vulvovaginitis	7610
Weak foot	5277
Wound, incised, abdominal wall	7341

[29 FR 6718, May 22, 1964, as amended at 34 FR 5064, Mar. 11, 1969]

PART 5—THE BOARD ON WAIVERS AND FORFEITURES AND COMMITTEES ON WAIVERS IN FIELD OFFICES

ADMINISTRATIVE PROVISIONS

§ 5.50 Instructions relating to forfeiture laws.

(a) *Effects of the law.* Public Law 86-222 amends Title 38 of the United States Code by amending sections 3503 and 3504 pertaining to forfeitures and by adding a new section numbered 3505 relative to forfeiture for subversive activities. Purposes of the amendments are:

(1) To eliminate administrative forfeiture in any case of an individual who was residing in a State (as defined

in 38 U.S.C. 101(20)) at the time the act or acts occurred on account of which benefits would be forfeited for fraud or treason except for this law, unless such individual ceases to be a resident of, or domiciled in, a State before the expiration of the period during which criminal prosecution could be instituted. Forfeitures which occurred before September 1, 1959, are not affected. Also excepted are past and future actions based on an act or acts which occurred in the Philippine Islands prior to July 4, 1946.

(2) To provide that where forfeiture was invoked prior to September 1, 1959, the effective date of Public Law 86-222, an original apportionment award may be made to dependents, if otherwise entitled, as provided in 38 U.S.C. 3503(b) and 38 U.S.C. 3504(b). The law does not require discontinuance of apportionment awards on the rolls on that date. Such awards and apportionment awards previously made may be increased, reduced, discontinued or reinstated. Where forfeiture was declared after September 1, 1959, under Public Law 86-222, no apportionment award will be approved in any case.

(3) To provide in 38 U.S.C. 3505 for the automatic forfeiture of gratuitous benefits payable to any person when he is convicted of subversive activities.

NOTE: The term "foreign case" means one in which the individual who performed the act in question did not live in a State at the time the act occurred. It also includes one in which the individual ceased to be a resident of, or domiciled in, a State before the expiration of the period during which criminal prosecution could be instituted. Philippine cases are also "foreign cases".

(b) *Board on Waivers and Forfeitures; jurisdiction and procedures.* (1) The Board on Waivers and Forfeitures has exclusive jurisdiction to declare a forfeiture for fraud (38 U.S.C. 3503) and treasonable acts (38 U.S.C. 3504) in foreign cases. Cases submitted under 38 U.S.C. 3504 in which a forfeiture is declared will no longer require review and concurrence by the Director, Compensation and Pension Service or the General Counsel.

(2) Automatic forfeitures provided by 38 U.S.C. 3505 will be administratively effectuated by the Board on Waivers and Forfeitures. When first notice of an indictment, conviction, or acquittal under this section is received in Central Office the Board on Waivers and Forfeitures will inform the Chief Attorney of the appropriate field office in order that payment of any gratuitous benefits may be discontinued or resumed, as appropriate.

(3) All future decisions requiring action by an operating activity will be referred to the field office through the Chief Attorney.

(c) *Effective dates*—(1) *Public Law 86-222.* The provisions relative to forfeiture are effective September 1, 1959, date of enactment of the law.

(2) *Discontinuances.* (i) Upon receipt of notice that the Chief Attorney is submitting a foreign case to the Board of Waivers and Forfeitures for fraud or treasonable acts, or upon notice from the Chief Attorney of an indictment for subversive activities, payments will be discontinued date of last payment pending further disposition.

(ii) Upon receipt of notice from the Chief Attorney that the Board on Waivers and Forfeitures has declared or effectuated a forfeiture, payments will be discontinued the date of award or date preceding the commission of the Act resulting in the forfeiture, whichever is later.

(3) *Resumptions.* (i) Upon return of a case from the Board on Waivers and Forfeitures and information from the Chief Attorney that no forfeiture was declared, or upon receipt of notice from him of acquittal (subversive activities), payments will be resumed promptly effective date of discontinuance if otherwise in order.

(ii) Where an individual who has forfeited benefits is pardoned by the President, the rights to benefits will be restored as of the date of pardon, if claim is filed within 1 year from that date; otherwise benefits will be restored from the date of filing claim. The award will note prior action and any overpayment in the case will be liquidated before payments are resumed by the finance activity.

(iii) The effective date of an original claim and a reopened claim, not falling within the purview of paragraph (c)(3)(iv) of this section, will be the date of claim or October 27, 1961, the

date of paragraph (a)(2) of this section, whichever is the later date.

(iv) Section 3.400(p) of this chapter governs the effective date of award action taken in pending claims under paragraph (a)(2) of this section. A pending claim is defined as: (*a*) A claim not previously adjudicated; (*b*) a previously disallowed claim pending on appeal; (*c*) a previously disallowed claim reopened by the receipt of any claim, evidence or inquiry on which action was pending on October 27, 1961; (*d*) a previously disallowed claim reopened by the receipt of any claim, evidence or inquiry after October 27, 1961, but within the appeal period.

(v) Apportionment awards may be increased from date of claim if entitlement is otherwise established provided such date is subsequent to October 27, 1961, the date of paragraph (a)(2) of this section.

(d) *Prior decisions and old cases*—(1) *Prior decisions.* All decisions invoking forfeiture of benefits made by the Board on Waivers and Forfeitures prior to September 1, 1959, remain in full force and effect, unless reversed on appeal.

(2) *Apportionment awards*—(i) *No running award.* The law provides that no apportionment award shall be made in any case after September 1, 1959. No new award, therefore, will be approved in any case after that date.

(ii) *Running award.* Apportionment awards on which payments were being made on September 1, 1959, may be continued. None will be increased above the amount being paid on September 1, 1959. Such awards may be reduced, discontinued and reinstated; Examples: an award may be resumed following discontinuance for failure of a fiduciary to render prompt accounting, or following failure of a payee to return an income questionnaire. If an award is reduced or discontinued because a child became 18 years of age, it may be reinstated subsequently if the child begins an approved course of instruction. Where a wife receiving an apportionment award for herself and a child or children dies, an apportionment award may be made for the child or children even though the wife died on or after September 1, 1959. (Instruction 1, 38 U.S.C. 3503, 3504, and 3505, Pub. L. 86-222.)

(72 Stat. 1114; 38 U.S.C. 210)

[25 FR 5285, June 14, 1960, as amended at 26 FR 10098, Oct. 27, 1961]

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

Applications

Sec.

6.2 Applications for insurance under section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.

United States Government Life Insurance Issued Pursuant to Section 5 of the Servicemen's Indemnity Act, Section 623 of the National Service Life Insurance Act or Section 781 of Title 38, United States Code

6.3 United States Government life insurance issued pursuant to section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code.

Effective Date

6.7 Effective date of United States Government life insurance applied for pursuant to the provisions of section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.

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6.12 Misstatement of age.

Premiums

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6.14 Premiums on United States Government life insurance.
6.15 Due date of premiums.
6.16 Payment of premiums; insured in active service or entitled to retirement pay.
6.17 Payment of insurance premiums by mail.
6.17a Correction of errors.
6.18 Acceptance of a late premium.
6.19 Revival of insurance.
6.20 Deduction of insurance premiums from compensation, retirement pay, or pension.
6.21 Authorization for deduction of insurance premiums from compensation, retirement pay, or pension.

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6.22 Premiums to be deducted from compensation, retirement pay, or pension, treated as paid, for purpose of preventing lapse.
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6.27 Period covered by waiver of payment of premiums on due date.
6.28 Premiums paid while waiver is effective.
6.29 Premiums and interest to be an indebtedness against the insurance.
6.30 Lapse after expiration of waiver.

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6.31 Calculation of time period.

GRACE PERIOD

6.35 Establishment of grace period.
6.36 Computation of grace period.

POLICIES

6.40 Forms of policies.
6.45 Incontestability of United States Government life insurance.

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6.48 To a policy at a lower rate of premium as of original effective date.
6.51 To a policy at a higher rate of premium as of a current effective date.
6.52 Exchange of 5-year level premium term insurance for special endowment at age 96 plan policy.
6.53 United States Government life insurance issued under section 742(b) of Title 38, United States Code.

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6.55 Proof of age, relationship and marriage.
6.56 Payment to estate of insured.
6.57 Payment to estate of beneficiary.
6.58 Conditional designation of beneficiary.
6.60 Change of beneficiary.
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Sec.

6.63 Mode of payment at death or disability.
6.64 Selection, recording, revocation, and election.
6.65 Election of optional settlement by beneficiary.
6.67 Values for optional settlements.
6.68 Options.
6.69 Election of payments on matured endowments.
6.69a Optional settlement of insurance under the refund life income option authorized by 38 U.S.C. 752(b).
6.69b Payment to the insured where the monthly installment of insurance, under the provisions of section 752(b) of Title 38, United States Code, is less than $10 under the option selected.
6.70 Selection of optional settlements for minors and incompetents.

LAPSE

6.71 Lapse for nonpayment of premium.
6.72 Nonlapse while insured is in active military, naval, or Coast Guard service.
6.73 Lapse while insured is in active military, naval, or Coast Guard service.
6.74 Lapse at discharge or resignation from active service.

REINSTATEMENT

6.78 Provisions for reinstatement.
6.79 Health requirements.
6.80 Application and medical evidence.
6.81 Indebtedness at time of reinstatement.
6.86 Applications for reinstatement of United States Government life insurance pursuant to section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.
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6.90 Examinations for insurance purposes.
6.91 Examinations and inspections for insurance purposes where applicant or claimant, by reason of his physical or mental condition is unable to appear at an office of the Veterans Administration.
6.92 Expenses incident to examinations for insurance purposes.

DIVIDENDS

6.95 How paid.
6.96 Special dividends.

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Sec.
6.100 Policy loan; other than 5-year convertible term policy.
6.101 Policy loan; 5-year convertible term policy.
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6.105 Provision for extended term insurance.
6.106 Extended insurance in case of total permanent disability, except extended insurance under the special endowment at age 96 plan policy.

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6.110 Provision for paid-up insurance.
6.111 Paid-up insurance in case of total permanent disability, except for paid-up insurance under the special endowment at age 96 plan policy.

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6.115 Cash value, other than 5-year level premium term policy and special endowment at age 96 plan policy.
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6.117 Cash value; special endowment at age 96 plan policy.
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6.121 Definitions of total permanent disability.
6.122 Disabilities deemed to be total and permanent.
6.123 Recovery from total permanent disability other than the special endowment at age 96 plan policy.
6.123a Recovery from disability; 5-year level premium term policy.
6.123b Continuance of insurance after termination of total and permanent rating and award, where such termination is effective after the expiration of the term period.
6.123c Monthly installments withheld at the request of the insured or otherwise accrued to credit of the insured after maturity by total and permanent disability.

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6.124 Grace period for payment of first premium payable on United States Government life insurance and total disability insurance after termination of a total and permanent disability insurance award and a total disability insurance award.

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6.125 Due proof of the death of the insured.
6.126 Death by suicide.
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6.132 Annual increase in premium rate.
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6.134 Age understated; at maturity.
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6.136 Insured incompetent.
6.137 Insured disappeared.
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6.139 Total permanent disability.
6.140 Disabilities deemed to be total and permanent.
6.141 Total permanent disability award terminated.
6.142 Continuance and conversion.
6.143 Period allowed for resumption of payment of premiums after termination of a total permanent disability award.
6.144 Reinstatement of insurance after termination of a total permanent disability award.
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CLAIMS ALLEGING INSURANCE CONTRACT WHERE THERE IS NO APPLICATION FOR INSURANCE ON FILE

6.150 Claims alleging insurance contract where there is no application for insurance on file.

PAYMENT OF INSURANCE BENEFITS TO MINORS FOLLOWING DISCHARGE FROM THE ACTIVE MILITARY, NAVAL OR AIR SERVICE

6.153 Payment of insurance benefits to minors following discharge from the active military, naval or air service.

"GOOD HEALTH"

6.155 Definition and criteria.

TOTAL DISABILITY PROVISION FOR UNITED STATES GOVERNMENT LIFE INSURANCE

Sec.

6.159 Withdrawal of the total disability provision authorized by section 311 of the World War Veterans' Act, 1924, as amended May 29, 1928 (§ 6.160).
6.160 Rights and privileges.
6.161 Authority for the total disability provision for United States Government life insurance.
6.162 Application for total disability provision authorized by section 748 of Title 38, United States Code.
6.162a Application for reinstatement and issue of the total disability provision pursuant to section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.
6.162b Payment of total disability benefits on United States Government life insurance issued or reinstated pursuant to section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code.
6.163 Effective date of the total disability provision authorized by section 748 of Title 38, United States Code.
6.164 Total disability provision for U.S. Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930, and section 748 of title 38, United States Code.
6.165 Disabilities deemed to be total.
6.166 Authority for the total permanent disability provision for the special endowment at age 96 plan of United States Government life insurance.
6.167 Application for total permanent disability provision for the special endowment at age 96 plan of United States Government life insurance and the effective date of such provision.
6.168 Total permanent disability provision for United States Government life insurance on the special endowment at age 96 plan policy.

FIVE-YEAR LEVEL PREMIUM TERM PLAN

6.170 Renewal of United States Government life insurance on the 5-year level premium term plan.

PREMIUM WAIVER ON UNITED STATES GOVERNMENT LIFE INSURANCE UNDER SECTION 622, NATIONAL SERVICE LIFE INSURANCE ACT, AS AMENDED, AND SECTION 724 OF TITLE 38, UNITED STATES CODE

6.185 Premium waiver on United States Government life insurance under section 622 of the National Service Life Insurance Act, as amended and section 724 of Title 38, United States Code.

SURRENDER UNDER SECTION 5, PUBLIC LAW 23, 82d CONGRESS OF PERMANENT PLAN POLICIES IN FORCE LESS THAN ONE YEAR

Sec.

6.186 Surrender of permanent plan policies of United States Government life insurance, in force for less than 1 year, under the provisions of section 5, Servicemen's Indemnity Act of 1951.

DETERMINATION OF LIABILITY UNDER SECTIONS 302 AND 313, WORLD WAR VETERANS' ACT, 1924, SECTIONS 607 AND 602(v)(2), NATIONAL SERVICE LIFE INSURANCE ACT, 1940, AS AMENDED, AND SECTIONS 721 AND 757 OF TITLE 38, UNITED STATES CODE

6.190 Establishment of committees on extra hazards of service.
6.191 Jurisdiction.
6.192 Definition of "disease or injury traceable to the extra hazard of the military or naval services."

DISABILITY INSURANCE CLAIMS

6.202 Claim for disability benefits under insurance.
6.205 Ratings for insurance benefits not applicable for disability pension or compensation.
6.206 Reconsideration of insurance claims where suits have terminated in favor of the Government.
6.207 Total or total permanent disability for twenty years or more.

APPEALS

6.210 Appeal to Board of Veterans Appeals.

AUTHORITY: 72 Stat. 1114, 1158, as amended; 38 U.S.C. 210, 740-760, 781-788, unless otherwise noted.

APPLICATIONS

§ 6.2 Applications for insurance under section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.

(a) Any person who, while in the active service on or after April 25, 1951, and prior to January 1, 1957, surrendered a permanent plan of United States Government Life Insurance which was in force other than as extended term insurance, for its cash value under the provisions of § 6.115 or under § 6.186 if the policy had no cash value, shall be granted a new policy of United States Government life insurance in accordance with § 6.3(a), provided a written application signed by the applicant and payment of the required premium are made on or after

January 1, 1959, within the period set forth in paragraph (c) of this section and the other conditions of that paragraph are met. Such insurance shall be granted without medical examination. If the applicant is mentally incompetent, the application for insurance under this paragraph may be made only by the guardian (committee or conservator), and, if required under the State law, after the court shall have authorized the fiduciary to make such application.

(b) Any person having United States Government life insurance on the 5-year level premium term plan, the term of which expired while such person was in the active service after April 25, 1951, or within 120 days after separation from such active service, and in either case prior to January 1, 1957, shall be granted United States Government life insurance on the 5-year level premium term plan in accordance with § 6.3(b) provided a written application signed by the applicant, payment of the required premium, and evidence of good health satisfactory to the Administrator are submitted on or after January 1, 1959, within the period set forth in paragraph (c) of this section and the other conditions of that paragraph are met.

(c) Any person whose permanent plan insurance was surrendered or whose term insurance expired under the conditions provided in this section, and who had continuous indemnity protection from the surrender or expiry date to January 1, 1957, continuous active service from January 1, 1957 to January 1, 1959, and continuous active duty thereafter, may make application for insurance under this section while on continuous active duty or within 120 days after separation from such service or duty. A person who reenters active service or duty on the date of separation or the following day shall be deemed to be in continuous active service or on continuous active duty.

(d) An application for insurance hereunder should be made on the form prescribed therefor, but any written statement which in substance meets the requirements of this section may be considered an application.

[21 FR 10378, Dec. 28, 1956, as amended at 24 FR 7319, Sept. 11, 1959]

United States Government Life Insurance Issued Pursuant to Section 5 of the Servicemen's Indemnity Act, Section 623 of the National Service Life Insurance Act or Section 781 of Title 38, United States Code

§ 6.3 United States Government life insurance issued pursuant to section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code.

(a) United States Government life insurance on a permanent plan, issued pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act, or section 781 of Title 38, United States Code shall be issued on the same plan and under the same terms and conditions as the United States Government life insurance which was surrendered. The amount of permanent plan United States Government life insurance issued pursuant to said section 5, section 623, or section 781 shall not be in excess of the amount of insurance which was surrendered.

(b) United States Government life insurance on the 5-year level premium term plan, issued pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act, or section 781 of Title 38, United States Code shall be issued under the same terms and conditions as the United States Government life insurance 5-year level premium term policy which expired. The amount of 5-year level premium term insurance issued pursuant to said section 5, section 623 of section 781 shall not be in excess of the amount of term insurance which expired.

(c) The amount of insurance granted under said section 5, section 623, or section 781 plus the amount of any other insurance (National Service Life—United States Government life—War Risk) in force under premium-paying conditions, or as paid-up or ex-

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tended insurance, shall not exceed $10,000.

[24 FR 7319, Sept. 11, 1959]

EFFECTIVE DATE

§ 6.7 Effective date of United States Government life insurance applied for pursuant to the provisions of section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.

(a) The effective date of United States Government life insurance issued pursuant to the provisions of section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code, may be established upon written request of the applicant as follows:

(1) As of the date on which valid application and tender of premiums are made.

(2) As of the first day of the month in which valid application and tender of premiums are made.

(3) As of the first day of the month following the month in which valid application and tender of premiums are made.

(4) As of the first day of any month, but not more than 6 months prior to the month in which valid application and tender of premiums are made: *Provided,* That there be paid (i) an amount equal to the full reserve on the insurance at the end of the month prior to the month in which application is made, and (ii) the full premium on the amount of insurance for the month in which application is made.

(b) Unless otherwise specified by the applicant, the effective date of such United States Government life insurance shall be established as of the date on which valid application and tender of premiums are made.

[24 FR 7320, Sept. 11, 1959]

AGE

§ 6.12 Misstatement of age.

If the age of the insured under a United States Government life insurance policy has been understated, the amount of the insurance payable under the policy shall be such exact amount as the premium paid would have purchased at the correct age; if overstated, the excess of premiums paid shall be refunded without interest. Guaranteed surrender and loan values will be modified accordingly. The age of the insured will be admitted by the Veterans' Administration at any time upon satisfactory proof.

[13 FR 7089, Nov. 27, 1948]

PREMIUMS

§ 6.13 Premium rate.

United States Government life insurance is granted at the premium rate for the age nearest birthday anniversary of the applicant at the time the policy becomes effective in accordance with the premium rates published in VA Pamphlet 9-2 entitled "Premium Rates and Policy Values for United States Government Life Insurance" and VA Pamphlet 90-2A for the Special Endowment at Age 96 plan policy.

[27 FR 9600, Sept. 28, 1962]

§ 6.14 Premiums on United States Government life insurance.

United States Government life insurance is granted in consideration of and subject to the terms and conditions set forth in the policy and further consideration of the payment of the monthly premium due and payable on the day the policy takes effect and on the same day of each succeeding month during the lifetime of the insured or for the period for which premiums are due and payable as provided by the terms and conditions of the policy contract.

[25 FR 1126, Feb. 9, 1960]

§ 6.15 Due date of premiums.

Premiums on United States Government life insurance are due and payable monthly in advance in legal tender of the United States of America to the Veterans Administration in the city of Washington, District of Columbia, or any office of the Veterans Administration authorized to receive premium payments. Premiums may be paid annually, semiannually, or quarterly, in advance, in which case the premium payable will be the sum of

the monthly premiums for the period discounted at 3½ percent per annum. The discounted premiums for these periods are stated on the first page of the policy. At maturity by death or otherwise, the discounted value at 3½ percent per annum of the premiums paid in advance beyond the current calendar month shall be refunded to the insured, if living; otherwise to the beneficiary. If any premium be not paid when due, the policy shall cease and become void except as otherwise provided.

[24 FR 7320, Sept. 11, 1959]

§ 6.16 Payment of premiums; insured in active service or entitled to retirement pay.

Premiums on United States Government life insurance may be paid by persons in the active military, naval, or Coast Guard service or by persons entitled to retirement pay from such services: (a) By direct remittance to the Veterans' Administration, or (b) by allotment of service pay or retirement pay.

[16 FR 12983, Dec. 27, 1951]

§ 6.17 Payment of insurance premiums by mail.

When it appears by proof satisfactory to the Administrator of Veterans Affairs that the person to whom United States Government life insurance has been granted, or any person acting on his behalf, has deposited in the mail within the grace period or in accordance with § 6.18 an envelope addressed to the Veterans Administration, Washington, D.C., 20420, or any field station of the Veterans Administration, containing money, check, draft, or money order, in payment of a premium, such insurance will not lapse for nonpayment of such premium: *Provided*, That any such check or draft is paid on presentation for payment or the conditions of § 6.17a are met.

[25 FR 1126, Feb. 9, 1960]

§ 6.17a Correction of errors.

(a) Where timely tender of the required premium is made by check or draft which is not paid on presentation for payment, but it is shown by satisfactory evidence that such nonpayment was due to an error on the part of the bank on which such check or draft was drawn, or was the result of an error in the instrument, and not for lack of funds, the insured will be given an additional period of 31 days, from the date of letter notifying him of such nonpayment, in which to tender an amount sufficient to pay all premiums through the current month.

(b) Where timely tender of the required premium is made by check or draft which may not be presented for payment because of an error in execution thereof, but it is shown by satisfactory evidence that the remitter had sufficient funds in the bank on which such check or draft was drawn which would have enabled the bank to make payment had it been properly executed and presented, the insured will be given an additional period of 31 days, from the date of letter notifying him of such error, in which to tender an amount sufficient to pay all premiums through the current month.

[33 FR 362, Jan. 10, 1968]

§ 6.18 Acceptance of a late premium.

Where a premium on U.S. Government life insurance is not paid within the grace period but payment is tendered during the lifetime of the insured and within 61 days of the due date, such tender may be regularly applied as a timely premium payment.

[33 FR 362, Jan. 10, 1968]

§ 6.19 Revival of insurance.

(a) If the sole reason death, total permanent disability or total disability benefits under a policy of U.S. Government life insurance cannot be granted is that the policy had lapsed, the insurance will be considered in force under premium-paying conditions on the date of death or the date of commencement of total permanent or total disability if,

(1) On the date of lapse there were accrued dividends, not then payable, resulting from premiums paid since the last anniversary date of the policy and such dividends were equal to or greater in amount than the total of the monthly premiums which have

become due from and including the date of lapse to the date of death or date of commencement of total permanent or total disability, and/or

(2) At the end of the grace period for the unpaid premium causing lapse there were due and payable to the policyholder unpaid dividends, refundable premiums, pure insurance risk credits, other refundable credits or total permanent or total disability benefit payments arising from the policyholder's U.S. Government or National Service life insurance which are equal to or greater in amount than the total of the monthly premiums which have become due from and including the date of lapse to the date of death or date of commencement of total permanent or total disability.

(3) For purposes of this section amounts under paragraphs (a)(1) and (2) of this section may be combined. In that case, the amount, if any, of dividend accrued under paragraph (a)(1) of this section will first be determined and the amount available under paragraph (a)(2) of this section, if any, will be added thereto for the purpose of determining if the total amount thus available is equal to or greater than the total of monthly premiums which have become due.

(4) In determining the amount of monthly premiums which have become due under paragraphs (a)(1) and (2) of this section a shortage of 10 percent per monthly premium may be allowed for a period not to exceed 3 months.

(5) In determining the monthly premiums which have become due for adjustment purposes under paragraphs (a)(1) and (2) of this section, the premium for the monthly due date immediately preceding the date of death or date of commencement of total permanent or total disability may be omitted because of the coverage provided by the allowable grace period (§§ 6.35 and 6.36) and if the conditions of paragraph (b) of this section are met, the premium for the second due date immediately preceding the date of death or date of commencement of total permanent or total disability may be omitted.

(6) When a policy is deemed in force under premium-paying conditions by operation of this section the amount of any shortage included in the calculation and the premium for any monthly due date omitted in the calculation will become a lien against the policy.

(7) The provisions of this section may be applied if, on the date of death, the insurance is in force under the extended term insurance provision (§ 6.105) and a policy loan was outstanding on the date of lapse or a dividend deposit balance was included in the cash value as determined at time of lapse.

(8) If accrued dividends under paragraph (a)(1) of this section and/or amounts due and payable under paragraph (a)(2) of this section exist in connection with more than one policy of the same veteran and one or more policies lapsed prior to the date of death or date of commencement of total permanent or total disability, the amounts available will be related first to the policy or policies on which they arose if such policy or policies are lapsed. Any amount available under paragraph (a)(1) or (2) of this section which is not required to place in force the policy upon which it arose or which is insufficient to place in force the policy upon which it arose, may be combined with similar amounts available on any other policy whenever the total of such amounts is sufficient to place another policy in force.

(9) Where more than one policy is involved and credits are not needed or are insufficient to revive the policy on which the credits arose, the credits will be used insofar as they are sufficient to revive the policy or policies under which the most insurance is payable.

(10) No total disability income provision will be considered in force under this section unless it lapsed at the same time as the life insurance contract and both the life insurance and total disability income provision can be considered in force through the same date and benefits are payable under the total disability income provision. An exception will be a paid-in-full limited pay contract on which total disability income provision premiums continue to be due and payable.

(11) When a total disability income provision lapsed at the same time as the life insurance, the premium for the provision will be considered separately in determining if the amounts available are equal to or in excess of the monthly premiums which have become due. In such a case if the amounts available are sufficient, both the life insurance and the provision will be revived. If the amounts are insufficient for that purpose, they will be applied to revive the policy or policies with the greatest amount payable in death cases or the policy or policies providing the greatest life insurance and total disability benefit in total disability cases.

(12) Accrued dividends and/or credits on any policy of U.S. Government or National Service life insurance held by the policyholder may be considered for the purpose of this section.

(b) If the sole reason death or total permanent or total disability benefits under a policy of U.S. Government life insurance cannot be granted is that the policy had lapsed, the insurance will be considered in force on the date of death or date of commencement of total permanent or total disability if,

(1) The policyholder died or became totally or totally and permanently disabled within 61 days of the due date of the unpaid premiums, and,

(2) The policy prior to the lapse had been in force for 5 years or more. In determining in-force status under this subparagraph if the original effective date of the insurance (when necessary, include predecessor contracts involving renewal, conversion or replacement/reinstatement under 38 U.S.C. 781) is 5 years or more earlier than the date of death or date of total or total and permanent disability—and during the 5 years immediately preceding the date of lapse the insurance has not been lapsed at any one time in excess of 6 months, the requirement will be satisfied. When insurance is considered in force under this section the amount of the monthly premium due on the date of lapse and the following monthly premium(s) will become a lien against the policy.

(3) The provisions of this section may be applied if, on the date of death, the insurance is in force under the extended term insurance provision (§ 6.105) and a policy loan was outstanding on the date of lapse or a dividend deposit balance was included in the cash value as determined at time of lapse.

[33 FR 17915, Dec. 3, 1968]

§ 6.20 Deduction of insurance premiums from compensation, retirement pay, or pension.

The insured under a United States Government life insurance policy which is not lapsed, may authorize the monthly deduction of premiums from disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension that may be due and payable to him under any laws administered by the Veterans Administration in accordance with the following provisions.

(a) The authorization must be in writing over the signature of the insured, or his legal representative, and, whenever practicable on such forms as may be prescribed by the Veterans Administration. If insured is incompetent and has no legal representative and has a wife to whom benefits are being paid pursuant to section 3202(f) of Title 38, United States Code, and § 13.57 of this chapter, she may authorize payment of insurance premiums through the deduction system. If insured is incompetent and has no legal representative and an institutional award has been made in his behalf, the authorization may be executed by the Director of the field station in which the insured is hospitalized or receiving domiciliary care, and, in appropriate cases, by the chief officers of State hospitals or other institutions to whom similar awards may have been approved.

(b) The monthly disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension so due and payable must be equal to, or in excess of, the amount of the insurance premium figured on a monthly basis.

(c) The authorization may be canceled by the insured at any time by notice in writing to the Veterans' Ad-

ministration. Such cancellation will be effective on the first day of the month following the month in which it is received by the Veterans' Administration.

(d) If the benefits payable to the insured are apportioned under the regulations of the Veterans' Administration now in effect or hereafter issued, the deduction authorized by the insured shall be from that portion awarded to the insured under such regulations.

[14 FR 6856, Nov. 15, 1949, as amended at 24 FR 7320, Sept. 11, 1959; 25 FR 8183, Aug. 26, 1960; 28 FR 1542, Feb. 19, 1963]

§ 6.21 Authorization for deduction of insurance premiums from compensation, retirement pay, or pension.

The authorization for deductions from disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension to be acceptable for the payment of insurance premiums must be executed and mailed or otherwise delivered to the Veterans Administration while the insurance is not lapsed. Such an authorization will be effective against the benefit payment for the month in which it is mailed or otherwise delivered to the Veterans Administration unless the insured elects to have the authorization become effective against the benefit payment for a succeeding month. However, the deduction made from the benefit payment for the month in which the authorization becomes effective shall be for the insurance premium due in the succeeding calendar month. When premium deductions are authorized in accordance with the provisions of Veterans Administration regulations, the Veterans Administration will make monthly deductions from the benefit payment due and payable to the insured of an amount sufficient to pay the monthly insurance premium. Such deductions will continue so long as the benefit payment due and payable to the insured is sufficient to pay the monthly insurance premium or until the authorization is revoked by the veteran or otherwise terminated.

[24 FR 7320, Sept. 11, 1959]

§ 6.22 Premiums to be deducted from compensation, retirement pay, or pension, treated as paid, for purpose of preventing lapse.

When premium deductions are authorized by the insured under United States Government life insurance in accordance with the provisions of Veterans Administration regulations, the insurance premium will be treated as paid for the purpose of preventing lapse of the insurance, although such deduction is not in fact made, if upon the due date of the premium there is due and payable to the insured an amount of disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension sufficient to provide the payment. Any premium authorized to be deducted from such compensation retirement pay, or pension due and payable to the insured and not actually paid shall be deducted from the amount of such current compensation, retirement pay, or pension that may become due and payable to the insured. The amounts so deducted for premiums shall be deposited and covered into the Treasury to the credit of the United States Government Life Insurance Fund.

[24 FR 7320, Sept. 11, 1959]

§ 6.23 Termination of the authorization to deduct insurance premiums from compensation, retirement pay, or pension.

Deduction of insurance premiums on United States Government life insurance shall cease and the authorization shall terminate if the disability compensation, death compensation, dependency and indemnity compensation, retirement pay disability pension, or death pension becomes insufficient to provide the premium or if such compensation, retirement pay, or pension is no longer due and payable to the insured. If authorization was executed by the Director of a Veterans Administration hospital or domiciliary or chief officer of a State hospital or other institution to make deductions from an institutional award, the authorization will cease and terminate at the termination of the institutional award, and, if subsequent premiums are to be paid by deduction from monthly benefit

payments, another authorization must be executed by the insured or his legal representative or his wife. (See § 6.20(a).) The insurance shall lapse after the termination or cancellation of the authorization to deduct premiums from compensation, retirement pay, or pension, unless the premium be otherwise paid within the grace period. The insured will be notified, by letter directed to his last address of record, of the termination of the authorization to deduct premiums; but the failure to give such notice or the failure to receive such notice shall not prevent lapse of the insurance.

[28 FR 1542, Feb. 19, 1963]

§ 6.24 Deduction of premiums on total disability insurance or total permanent disability provision.

An authorization to deduct premiums on a contract of United States Government life insurance in accordance with the provisions of §§ 6.20, 6.21, 6.22, and 6.23 will be deemed to include the premiums on any contract of total disability insurance or the total permanent disability provision that may be attached to said contract of United States Government life insurance, and the provisions of said sections shall be applicable jointly and inseparably to both contracts as though they were one contract.

[27 FR 9600, Sept. 28, 1962]

§ 6.25 Waiver of payment of premiums on the due date.

Subject to the conditions hereinafter set out, the yearly renewable term insurance and United States Government life insurance shall be deemed not to lapse by reason of the nonpayment of premiums on the due date thereof and unless paid by the insured, payment of such premiums on the due date thereof shall be waived in the cases of the following persons:

(a) Those who are confined in a hospital as patients of the Veterans' Administration for a compensable disability during the period while so confined.

(b) Those who are rated temporarily totally disabled by reason of an injury or disease entitling them to compensation, during the period of such total disability and while they are so rated.

(c) Those who are mentally incompetent and for whom no legal guardian has been appointed and who allowed their insurance to lapse while mentally incompetent. An application for waiver shall not be required in such cases and such waiver is to be retroactive to cover the premiums for the period of incompetency.

[13 FR 7090, Nov. 27, 1948, as amended at 13 FR 7348, Dec. 2, 1948]

§ 6.26 Application for waiver of payment of premium on due date.

If the privilege of waiver of payment of insurance premiums on the due date thereof is desired by any person whose cases comes within the provisions of § 6.25 (a) and (b) and not within the provisions of § 6.25(c), then written application shall be made by the applicant during his lifetime and such waiver shall not include the premium for any month prior to the month in which the application is made.

[13 FR 7090, Nov. 27, 1948]

§ 6.27 Period covered by waiver of payment of premiums on due date.

The waiver of the payment of premiums on yearly renewable term insurance and United States Government life insurance on the due date thereof in accordance with the provisions of Veterans' Administration regulations, shall operate for full calendar months as follows:

(a) Beginning with the months of confinement to a hospital as a Veterans' Administration patient for a compensable disability and ending with the last day of the last month during the half or major fraction of which the insured is confined in a hospital as a Veterans' Administration patient for a compensable disability.

(b) Beginning with the month in which the temporary total disability rating is made effective and ending with the last day of the last month during the half or major fraction of which the insured is rated temporarily totally disabled.

(c) Beginning with the month in which the rating shows the person to

have become mentally incompetent and ending with the last day of the last month during the half or major fraction of which the insured continues to be so rated and until the guardian has notified the Veterans' Administration of his qualification, but not later than six months after appointment as guardian.

[13 FR 7090, Nov. 27, 1948, as amended at 13 FR 7348, Dec. 2, 1948]

§ 6.28 Premiums paid while waiver is effective.

Where a person entitled to waiver of the payment of insurance premiums on the due date, pays any amount on account of the premiums waived on his insurance, such amount shall not be refunded but his right to waiver of premiums during such period shall not terminate and a new application shall not be required.

[13 FR 7090, Nov. 27, 1948]

§ 6.29 Premiums and interest to be an indebtedness against the insurance.

In all cases where the payment of premiums on yearly renewable term insurance and United States Government life insurance on the due date thereof has been waived as provided by §§ 6.25, 6.26, and 6.27, the premium so waived shall bear interest at the rate of 5 percent per annum, compounded annually, from the due date of such premium, and if not paid the amount shall be an indebtedness against the policy to be deducted from the proceeds of insurance in any settlement thereunder or from the cash value when such value is taken in cash or used for the purpose of purchasing paid-up or extended insurance or making a loan: *Provided, however,* That the unpaid premiums with interest shall not be considered such an indebtedness as is set forth in paragraph 5(D) of the contract of Government converted insurance, or paragraph 8 of the special endowment at age 96 plan policy, to cause the policy to cease and become void if the amount (premiums with interest) is greater than the cash surrender value, so long as premiums are paid by the insured or the payment on the due date thereof is waived by regulations of the Veterans Administration.

[27 FR 9600, Sept. 28, 1962]

§ 6.30 Lapse after expiration of waiver.

Yearly renewable term insurance and United States Government life insurance will lapse after the termination of a waiver of the payment of premiums on the due date thereof as provided in § 6.27, if premiums are not paid on the due date or within the grace period of 31 days.

[13 FR 7090, Nov. 27, 1948]

CALCULATION OF TIME PERIOD

§ 6.31 Calculation of time period.

If the last day of a time period specified in § 6.17a, § 6.18 or § 6.19 or allowed for filing an application for U.S. Government life insurance or for applying for reinstatement thereof, or paying premiums due thereon, falls on a Saturday, Sunday, or legal holiday, the time period will be extended to include the following workday.

[33 FR 17915, Dec. 3, 1968]

GRACE PERIOD

§ 6.35 Establishment of grace period.

For the payment of any premium under a U.S. Government life insurance policy, a grace period of 31 days without interest will be allowed, during which time the policy will remain in force; but if the policy shall become a claim within the grace period, the unpaid premium shall be deducted from the amount of insurance payable.

[36 FR 4382, Mar. 5, 1971]

§ 6.36 Computation of grace period.

For the purpose of § 6.35 the grace period shall be computed to include 31 days from and after the date on which the premium was due. When a payment of premium is mailed the postmark date will be accepted as the date on which the payment was tendered. The monthly premium when paid within the grace period shall continue the insurance in force for the month for which the premium was due. If a premium is not paid before the expira-

tion of the grace period, the effective date of lapse shall be the due date of the unpaid premium.

[33 FR 17915, Dec. 3, 1968]

POLICIES

§ 6.40 Forms of policies.

The forms of policies of insurance described and designated in this section are hereby prescribed for use in granting United States Government life insurance. Contracts of insurance authorized to be made in accordance with the terms and conditions set forth in the forms of policies described and designated in this section are subject in all respects to the applicable provisions of title 38, United States Code, amendments and supplements thereto, and all Veterans Administration regulations promulgated pursuant thereto.

Ordinary life policy (VA Form 9-741).
Five-year level premium term policy (VA Form 9-735).
Twenty-payment life policy (VA Form 9-747).
Thirty-payment life policy (VA Form 9-748).
Twenty-year endowment policy (VA Form 9-749).
Thirty-year endowment policy (VA Form 9-750).
—— year endowment policy (VA Form 9-751).
Special endowment at age 96 plan policy (VA Form 9-341).

The 5-year level premium term policy (VA Form 9-735) is substituted for the 5-year convertible term policy (VA Form 9-745). Additions to or modifications of said policies may hereafter be made by the Administrator of Veterans Affairs.

[27 FR 9600, Sept. 28, 1962]

§ 6.45 Incontestability of United States Government life insurance.

(a) A United States Government life insurance policy shall be incontestable from the date of issuance, reinstatement or conversion, except for fraud, nonpayment of premiums, or on the ground that the applicant was not a member of the military or naval forces of the United States, and the policy is issued free of restrictions as to travel, residence, occupation, or military or naval service. However, no insurance shall be payable for death inflicted as a lawful punishment for crime or military offense, except when inflicted by the enemy: *Provided*, That the cash value, less any indebtedness, on the date of such death shall be paid to the designated beneficiary if living, or, if there be no designated beneficiary alive at the death of the insured, the said value shall be paid to the estate of the insured.

(b) Discharge or release of an insured from military or naval service for the reason of fraudulent enlistment shall not invalidate United States Government life insurance issued on the basis of such service unless the Administrator determines that the insured was mentally or legally incapable of entering into a contract of enlistment. In such case the United States Government life insurance so issued will be canceled as of the effective date of such insurance.

[13 FR 7091, Nov. 27, 1948, as amended at 17 FR 3162, Apr. 10, 1952; 24 FR 7321, Sept. 11, 1959]

REFUND OF PREMIUMS IN FRAUD CASES

§ 6.46 Refund of premiums in fraud cases.

Where United States Government life insurance is canceled or voided for fraud and notice thereof is mailed after March 16, 1954, any premiums paid on such insurance for any period subsequent to 2 years after the date insurance was issued, reinstated, or converted because of such fraud shall be refunded without interest. On antedated policies the date of issue or conversion for the purpose of this section is the due date of the first full premium. The amount of any dividends, loan, or other insurance payment made as a result of the fraudulent issue, reinstatement or conversion shall be deducted from such refund. The refund shall be made to the insured, if living, otherwise to the designated beneficiary; or, if no designated beneficiary survives, to the insured's estate.

[24 FR 7321, Sept. 11, 1959]

CHANGES IN PLAN

§ 6.47 To a policy at a higher rate of premium as of original effective date.

A United States Government life insurance policy on any plan of insurance other than the special endowment at age 96 plan policy may be exchanged for a policy of the same amount, bearing the same date, and based on the same age, on any plan of insurance issued by the Veterans Administration at a higher rate of premium, upon payment of the difference between the reserve on the new policy and the reserve on the old policy. Such exchange will be made without medical examination and upon complete surrender of the insurance while in force.

[27 FR 9600, Sept. 28, 1962]

§ 6.48 To a policy at a lower rate of premium as of original effective date.

A U.S. Government life insurance policy other than the special endowment at age 96 plan policy may be exchanged within 5 years from the effective date for a policy of the same amount, bearing the same date and based on the same age, on any plan of insurance issued by the Veterans Administration at a lower rate of premium, except the 5-year level premium term policy and the special endowment at age 96 plan policy. If the exchange is made within 1 year from the effective date or, in instances where less than 90 days of such year remain after the promulgation of this section (Aug. 1, 1969), within 90 days of such promulgation, the applicant must be in as good health on the date of application as he was on the effective date. If the exchange is made after 1 year of the effective date, the applicant must be in good health and furnish satisfactory evidence of such. The old insurance must be in force under premium-paying conditions and must be surrendered with all rights and claims thereunder. The difference between the reserve on the old policy and the reserve on the new policy, less any indebtedness, may be used to cover payment of future premiums or withdrawn in cash at the option of the insured. If the old policy has been in force for less than 12 months, the difference in reserve may be used only for the purpose of paying future premiums on the insurance and such premiums shall not be subject to withdrawal by the insured.

[34 FR 12827, Aug. 7, 1969]

§ 6.51 To a policy at a higher rate of premium as of a current effective date.

A United States Government life insurance policy on the 5-year level premium term plan may be exchanged for a policy of the same amount on any plan of insurance, except the special endowment at age 96 plan policy, issued by the Veterans Administration at a higher rate of premium, upon payment of the current monthly premium at the attained age of the insured for the plan of insurance selected: *Provided,* That where premium waiver on United States Government life insurance is effective under section 622 of the National Service Life Insurance Act, as amended, or section 724 of Title 38, United States Code, that portion of the current monthly premium at the attained age of the insured for the plan of insurance selected which is not required for the pure insurance risk must be paid. The reserve (if any) on the policy will be allowed as a credit on the current monthly premium. Such exchange will be made without medical examination upon complete surrender of the insurance while in force and within 5 years from the effective date of the policy.

[27 FR 9600, Sept. 28, 1962]

§ 6.52 Exchange of 5-year level premium term insurance for special endowment at age 96 plan policy.

(a) Effective July 25, 1962, an insured who on or after his 65th birthday has a 5-year level premium term policy of United States Government life insurance which is in force by payment of premiums may exchange such policy for a special endowment at age 96 plan policy issued pursuant to § 6.53. The exchange may be for insurance of the same amount and will be effective as of a current effective date but in no event shall the exchange be made effective prior to July 25, 1962. The insured will be required to file written application, and pay the re-

quired monthly premium at his attained age for the special endowment at age 96 plan policy. Such exchange will be made without medical examination upon surrender of the term policy and any total disability provision attached thereto with all rights, title and interest in the life insurance and the provision.

(b) Where it is found by the Administrator subsequent to the exchange of term insurance for the special endowment at age 96 plan policy as provided in paragraph (a) of this section, that prior to such exchange: (1) The term policy matured because of total permanent disability of the insured in accordance with § 6.120, 6.121, or 6.122, whichever is applicable, or (2) the insured was entitled to total disability benefits in accordance with § 6.160 or 6.164, whichever is applicable, under the total disability provision attached to the term policy, the insured, upon surrender of the special endowment plan policy and any total permanent disability provision which may be attached thereto, with all rights, title and interest in such life and disability insurance, will be entitled to the benefits which are payable under the prior term policy and total disability provision. In such case, the cash value less any indebtedness on the endowment policy shall be refunded together with any premiums paid on the total permanent disability provision.

[27 FR 9600, Sept. 28, 1962]

§ 6.53 United States Government life insurance issued under section 742(b) of Title 38, United States Code.

The special endowment at age 96 plan of insurance issued under section 742(b) of Title 38, United States Code, shall be issued upon the same terms and conditions as are contained in standard policies of United States Government life insurance, except (a) the insurance shall not mature and no benefits shall be paid thereunder because of total permanent disability; (b) such insurance cannot be exchanged, converted or reconverted to any other plan of insurance; (c) the premium rates, cash, loan, paid-up and extended term insurance values are as prescribed by the Administrator and except for loan values are published in VA Pamphlet 90-2A; (d) the insurance cannot be antedated and the effective date shall be as prescribed in § 6.52; and (e) no premiums on such insurance shall be waived under § 6.185.

[27 FR 9600, Sept. 28, 1962]

Beneficiary of United States Government Life Insurance

§ 6.55 Proof of age, relationship and marriage.

Whenever it is necessary for a claimant to prove age, relationship or marriage, the provisions of §§ 3.1(j), 3.204, 3.205 (a) and (b) and 3.209 of this chapter will be followed.

[26 FR 1856, Mar. 3, 1961]

§ 6.56 Payment to estate of insured.

If no beneficiary be designated by the insured as beneficiary under a United States Government life insurance policy, either in his lifetime or by his last will and testament, or if the designated beneficiary does not survive the insured, then there shall be paid to the estate of the insured the present value of the remaining unpaid installments.

[13 FR 7091, Nov. 27, 1948]

§ 6.57 Payment to estate of beneficiary.

If the designated beneficiary under a United States Government life insurance policy survives the insured and dies before receiving all the installments payable and applicable, then there shall be paid to the estate of such beneficiary the present value of the remaining unpaid monthly installments.

[13 FR 7091, Nov. 27, 1948]

§ 6.58 Conditional designation of beneficiary.

If the insured by notice in writing to the Veterans' Administration during his lifetime has provided that a designated beneficiary shall be entitled to the proceeds of United States Government life insurance only if such beneficiary shall survive him for such period (not more than 30 days), as specified by the insured, no right to the insurance shall vest as to such beneficiary during that period. In the

event such beneficiary fails to survive the specified period, payment of the proceeds of United States Government life insurance will be made as if the beneficiary had predeceased the insured.

[14 FR 7175, Nov. 29, 1949]

§ 6.60 Change of beneficiary.

The insured under United States Government life insurance shall have the right at any time and from time to time and without the consent or knowledge of the beneficiary to change the beneficiary. A change of beneficiary must be made by written notice to the Veterans' Administration over the signature of the insured and shall not be binding on the United States unless received by the Veterans' Administration. A change of beneficiary must be forwarded to the Veterans' Administration by the insured or his agent and must contain sufficient information to identify the insured. Whenever practicable, such notices shall be given on forms prescribed by the Veterans' Administration. Upon receipt by the Veterans' Administration, a change of beneficiary shall be deemed effective as of the date the insured signed the written notice. The United States shall be protected in all payments made to the beneficiary last of record and before receipt of notice of a change of beneficiary, and no payments so made shall be paid again to the changed beneficiary. The insured may exercise any right or privilege given under the provisions of a United States Government life insurance policy without the consent of the beneficiary. An original designation of a beneficiary may be made by the last will and testament, but no change of beneficiary may be made by the last will and testament. The provisions of the "beneficiary" clause in United States Government life insurance policies are hereby amended accordingly.

[17 FR 11071, Dec. 5, 1952]

§ 6.62 Assignment, claims of creditors and taxation.

(a) The proceeds of a United States Government insurance policy shall not be assignable except that any person to whom such insurance shall be payable may assign his interest in such insurance to the spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law of the insured. No such assignment of a United States Government life insurance policy shall be binding upon the United States unless in writing and until filed in the Veterans Administration. The United States assumes no responsibility for the validity of any assignment.

(b) Payments of United States Government life insurance as such are exempt from taxation, but such exemption does not extend to any property purchased in part or wholly out of such payments. Payments of insurance to a beneficiary under a United States Government life insurance policy are exempt from claims of creditors, and are not liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

(c) The exemption shall apply against the United States or any agency thereof: *Provided,* That except as to dividends being held to the credit of the insured for the payment of premiums under the provisions of section 746 of Title 38, United States Code, the United States shall be entitled to collect by setoff or otherwise out of benefits, payable to any beneficiary under a United States Government life insurance policy, the amount of any indebtedness due the United States by such beneficiary because of overpayments or illegal payments made to such beneficiary under laws administered by the Veterans Administration: *Provided further,* That in the settlement of any claim under a United States Government life insurance policy, the United States shall be entitled to deduct the amount of unpaid premiums or loans, or interest on such premiums or loans; or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits; or any other indebtedness existing under the particular insurance contract.

(d) Effective January 1, 1958, payments of insurance to a beneficiary under a United States Government life insurance policy shall be subject to

levy for taxes due the United States by such beneficiary.

(72 Stat. 1229, 38 U.S.C. 3101)

[23 FR 681, Feb. 1, 1958, as amended at 24 FR 15, Jan. 1, 1959; 24 FR 582, Jan. 27, 1959]

OPTIONAL SETTLEMENT

§ 6.63 Mode of payment at death or disability.

United States Government life insurance is payable in monthly installments of $5.75 for each $1,000 insurance in the event of total permanent disability of the insured or of his death unless one of the optional settlements is selected as provided in § 6.68; then, in the event of the death of the insured, the insurance is payable in accordance with the optional settlement so selected.

[13 FR 7092, Nov. 27, 1948]

§ 6.64 Selection, recording, revocation, and election.

The insured under a United States Government life insurance policy may select one of the optional settlements set forth in § 6.68, but notice of the selection shall not be valid unless and until it is recorded in the Veterans' Administration. The insured may revoke his selection of the optional settlement, but the revocation shall not be valid unless and until it is recorded in the Veterans' Administration. If the insured does not select one of the optional settlements, then he shall be deemed to have made no election, and the insurance shall be payable in 240 monthly installments, unless an election under option 2, 3 or 4 is made by the beneficiary.

[13 FR 7092, Nov. 27, 1948]

§ 6.65 Election of optional settlement by beneficiary.

If the insured under a U.S. Government life insurance policy has not selected one of the optional settlements then at the death of the insured the designated beneficiary may elect to receive settlement under Option 2, 3, or 4, as provided in § 6.68, but such an election by the beneficiary shall not be valid unless and until it is recorded in the Veterans Administration. If the insured has selected an optional settlement then at the death of the insured the designated beneficiary may elect to receive the proceeds of insurance in installments spread over a greater period of time than that selected by the insured and in accordance with the following provisions:

(a) If the insured has selected Option 1, the beneficiary may elect to receive payment under Option 2, 3, or 4.

(b) If the insured has selected Option 2 with monthly installments not in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under Option 2, or may elect to receive payment under Option 3 or 4.

(c) If the insured has selected Option 2 with monthly installments in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under Option 2, or may elect to receive payment under Option 3.

(d) If the insured has selected Option 3, and named no contingent beneficiary, the beneficiary may elect to receive payment under Option 4.

(e) If the insured has selected Option 4, the beneficiary may elect to receive payment under Option 3.

If the insured has selected settlement under Option 1, a beneficiary who has elected to receive payment under Option 2, 3, or 4 may elect to receive the commuted value of any remaining unpaid installments certain (240 less the number paid in case of Option 3, or 120 less the number paid in the case of Option 4): *Provided,* That where the commutation is elected under Option 3 or 4 after payment under such option has commenced, and the beneficiary survives the period certain, such beneficiary shall be entitled to the resumption of monthly installments payable for life in accordance with the monthly income option previously selected by such beneficiary. The entitlement to the resumption of monthly installments will be effective as of the monthly payment date next following the expiration of the period certain. Settlement under any one of the options or payment to the beneficiary of said commuted value under

Option 2 or payment of said commuted value under Options 3 and 4 to the beneficiary who does not survive the period certain shall be in full and complete discharge of all liability under the contract. Any other change in the mode of settlement may, within the limitations set forth in paragraphs (a) through (e) of this section, be made by a beneficiary after payment has commenced, provided the change is made within 1 year of the original election and in those instances where Option 3 is changed to Option 1 or 2; or Option 4 is changed to Option 1, 2, or 3, satisfactory proof is submitted to establish that the beneficiary's state of health is the same as it was at time of original election. The effective date of the original election for this purpose will be the date it was delivered to the Veterans Administration. If such election was forwarded by mail, properly addressed to the Veterans Administration, the postmark date will be taken as the date of delivery. Such change will be made on the premise that the new election was made initiallly, and the account will be adjusted accordingly. A condition precedent to any such change will be the repayment of any amount received by the beneficiary in excess of that which would have been due had the new election been made initially.

[32 FR 14274, Oct. 14, 1967]

§ 6.67 Values for optional settlements.

The value for optional settlements shown in a United States Government life insurance policy are based on an insurance of $1,000 without indebtedness. If there is an indebtedness under a United States Government life insurance policy, or if the insured has received any payments on account of total and permanent disability, the values will be decreased accordingly. If the policy provides for a larger amount of insurance than $1,000 the values will be increased proportionately.

[13 FR 7092, Nov. 27, 1948]

§ 6.68 Options.

The optional settlements under a United States Government life insurance policy in lieu of the monthly installments of $5.75 per thousand are as follows:

Option 1. Insurance payable in one sum. Settlement under this option will be made only when selected by the insured during his lifetime or by his last will and testament. When such selection has been made, the face amount will be payable in one sum at the maturity of the policy by death.

Option 2. Insurance payable in elected installments. The installments noted below will be payable for an agreed number of months (not less than 36) to the designated beneficiary, but if such beneficiary dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provisions of the policy.

Number of monthly installments	Amount of installment for each $1,000 of insurance
36	$29.19
48	22.27
60	18.12
72	15.35
84	13.38
96	11.90
108	10.75
120	9.83
132	9.09
144	8.46
156	7.94
168	7.49
180	7.10
192	6.76
204	6.47
216	6.20
228	5.97
240	5.75

Option 3. Insurance payable in installments throughout life. The installments noted below will be payable throughout the lifetime of the designated beneficiary, but if such designated beneficiary dies before 240 such installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provisions of the policy.

Age of beneficiary at time of death of the insured (years)	Amount of installment for each $1,000 of insurance
10	$3.67
15	3.75
20	3.84
25	3.96
30	4.11
35	4.30
40	4.52

Age of beneficiary at time of death of the insured (years)	Amount of installment for each $1,000 of insurance
45	4.79
50	5.07
55	5.35
60	5.56
65	5.70
70	5.75
75	5.75

Amounts of monthly installments for other ages will be calculated in accordance with the same formula as used in calculating the above table.

Option 4. Insurance payable in installments throughout life. The installments noted below will be payable throughout the lifetime of the designated beneficiary, but, if such designated beneficiary dies before 120 such installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provisions of the policy.

Age of beneficiary at time of death of the insured (years)	Amount of installment for each $1,000 of insurance
10	$3.78
15	3.86
20	3.97
25	4.11
30	4.28
35	4.50
40	4.79
45	5.17
50	5.67
55	6.30
60	7.07
65	7.92
70	8.74
75	9.40
80	9.77
85	9.83

Amounts of monthly installments for other ages will be calculated in accordance with the same formula as used in calculating the above table.

[13 FR 7092, Nov. 27, 1948]

§ 6.69 Election of payments on matured endowments.

(a) The insured under a U.S. Government Life Insurance policy issued on the endowment plan may, at the date of the maturity as an endowment, elect to receive payment in monthly installments under option 2 in lieu of payment in one sum or as a refund life income option as authorized under paragraph (b) of this section. He shall have the right to designate the beneficiary or beneficiaries to receive any remaining unpaid installments at his death. If the insured dies before receiving all such monthly installments and no designated beneficiary survives, the present value of the remaining unpaid installments shall be paid to the estate of the insured, provided such payment would not escheat. If the designated beneficiary of a matured endowment survives the insured, the present value of any remaining unpaid installments shall be paid to such beneficiary in one sum, unless the insured or such beneficiary has elected to continue the installments under the option selected by the insured for payment of the endowment.

(b) Effective January 1, 1971, under the provisions of 38 U.S.C. 752(b), the insured may elect to receive payment of such matured endowment policy, in lieu of any other mode of payment, as a refund life income in monthly installments payable for such periods certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the insured. However, all settlements under the refund life income option authorized by this paragraph shall be calculated on the basis of The Annuity Table for 1949. Installment payments under this paragraph shall be made as provided in § 6.69a.

[36 FR 4382, Mar. 5, 1971]

§ 6.69a Optional settlement of insurance under the refund life income option authorized by 38 U.S.C. 752(b).

(a) Where the insured under a policy of U.S. Government Life Insurance requests settlement under the refund life income option of the cash surrender value of any such policy or of the proceeds of an endowment policy which matures by reason of completion of the endowment period, payment shall be made as follows:

(1) *Refund Life Income Option Under 38 U.S.C. 752(b).* The amount of the installments noted in this section

will be payable monthly throughout the lifetime of the insured, but, if the insured dies before payment of the number of installments certain noted in this section, the remaining unpaid monthly installments will be payable as provided in §§ 6.69(a) and 6.117a for such period certain as may be required in order that the sum of installments certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of the contract less any indebtedness.

Age of insured at date of entitlement	Male		Female	
	Number of guaranteed installments	Amount of each monthly installment per $1,000	Number of guaranteed installments	Amount of each monthly installment per $1,000
45	227	$4.42	244	$4.11
46	224	4.48	241	4.16
47	220	4.55	237	4.22
48	217	4.62	234	4.28
49	214	4.69	231	4.34
50	210	4.77	228	4.40
51	207	4.85	224	4.47
52	203	4.93	221	4.54
53	200	5.02	217	4.61
54	196	5.11	214	4.69
55	192	5.21	210	4.77
56	189	5.31	206	4.86
57	185	5.41	203	4.95
58	182	5.52	199	5.05
59	178	5.64	195	5.15
60	174	5.76	191	5.26
61	170	5.89	186	5.38
62	166	6.03	182	5.50
63	163	6.17	178	5.62
64	159	6.32	174	5.76
65	155	6.48	170	5.90
66	151	6.65	166	6.05
67	147	6.83	161	6.22
68	143	7.02	157	6.39
69	139	7.22	153	6.57
70	135	7.44	148	6.76
71	131	7.66	144	6.97
72	127	7.90	140	7.19
73	123	8.16	135	7.42
74	120	8.39	131	7.67
75	120	8.56	127	7.93
76	120	8.72	122	8.22
77	120	8.87	120	8.45
78	120	9.01	120	8.64
79	120	9.14	120	8.81
80	120	9.26	120	8.97
81	120	9.36	120	9.12
82	120	9.46	120	9.25
83	120	9.54	120	9.37
84	120	9.60	120	9.48
85	120	9.66	120	9.56
86	120	9.71	120	9.63
87	120	9.74	120	9.69
88	120	9.77	120	9.74
89	120	9.79	120	9.77
90	120	9.81	120	9.79
91	120	9.82	120	9.81
92	120	9.82	120	9.82
93 and over	120	9.83	120	9.83

[36 FR 4382, Mar. 5, 1971]

§ 6.69b Payment to the insured where the monthly installment of insurance, under the provisions of section 752(b) of Title 38, United States Code, is less than $10 under the option selected.

(a) Where payment is to be made in 12 or 24 monthly installments the amount of each monthly installment should be paid in accordance with the following table:

Number of monthly installments	Amount of each monthly installment per $1,000 insurance payable
12	$84.65
24	43.05

(b) If the option selected by the insured requires payment of monthly installments of less than $10, the amount payable shall be paid under option 2 (§ 6.68) in such maximum number of monthly installments as are a multiple of 12 and will provide a monthly installment of not less than $10.

(c) If the present value of the amount payable at the time the insured initially becomes entitled to payment thereof is not sufficient to pay at least 12 monthly installments of not less than $10 each, such amount shall be payable in one sum.

[36 FR 4383, Mar. 5, 1971]

§ 6.70 Selection of optional settlements for minors and incompetents.

When an optional mode of settlement of United States Government life insurance heretofore or hereafter matured is available to a beneficiary who is a minor or incompetent, such option may be exercised by his fidu-

ciary, person qualified under section 14 of Title 25, United States Code, or person recognized by the Administrator as having custody of the person or the estate of such beneficiary, and the obligation of the United States under the insurance contract shall be fully satisfied by payment of benefits in accordance with the mode of settlement so selected.

[24 FR 582, Jan. 27, 1959]

LAPSE

SOURCE: §§ 6.71 to 6.74 appear at 13 FR 7093, Nov. 27, 1948, unless otherwise noted.

§ 6.71 Lapse for nonpayment of premium.

If any premium be not paid when due, the United States Government life insurance policy shall cease and become void, except as otherwise provided in the insurance regulations and policy.

[29 FR 3401, Mar. 14, 1964]

§ 6.72 Nonlapse while insured is in active military, naval, or Coast Guard service.

Except as provided in § 6.73, United States Government life insurance will not lapse while the insured is in the active military, naval, or Coast Guard service of the United States, if an allotment of active service pay had been established to cover premiums for such insurance.

§ 6.73 Lapse while insured is in active military, naval, or Coast Guard service.

United States Government life insurance will lapse and terminate while the insured is in the active military, naval, or Coast Guard service of the United States:

(a) If the insured fails to designate a method of payment of premiums at the time of applying, or at any time elects to pay premiums on said insurance otherwise than by allotment of pay and such premiums are not paid prior to expiration of the grace period.

(b) If the service department shall discontinue the allotment and premium is not otherwise paid prior to expiration of the grace period.

§ 6.74 Lapse at discharge or resignation from active service.

When the insured under a United States Government life insurance policy shall provide for payment of premiums by allotment of pay, any previously authorized method of payment of premiums shall be deemed to be revoked. The insurance will lapse upon termination of the allotment because of discharge or resignation from the active service unless the premium be paid prior to expiration of the grace period.

REINSTATEMENT

§ 6.78 Provisions for reinstatement.

(a) Subject to the U.S. Government Life Insurance provisions of title 38, United States Code, and Veterans Administration regulations issued thereunder, any insurance which has lapsed or may hereafter lapse and which has not been surrendered for a cash value or for paid-up insurance may be reinstated upon written application signed by the applicant, and, except as hereinafter provided in this paragraph, upon payment of all premiums in arrears, with interest from their several due dates, provided such applicant at the time of application and tender of premiums is in the required state of health as shown in § 6.79 (a) or (b), whichever is applicable, and submits satisfactory evidence thereof at the time of application and tender of premiums. Interest on premiums in arrears shall be at the rate of 5 per centum per annum, compounded annually, to the first monthly premium due date after July 31, 1946; at the rate of 4 per centum per annum, compounded annually, to the first monthly premium due date after August 31, 1971, and thereafter at the rate of 5 per centum per annum, compounded annually: *Provided,* That no interest on premiums in arrears will be required if reinstatement is effected within 6 months from the premium in default. The payment or reinstatement of any indebtedness against any policy must be made, with interest, and if such indebtedness with interest exceeds the reserve of the policy at the time of application for reinstate-

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ment thereof, then the amount of such excess shall, except as provided in § 6.81, be paid by the applicant as a condition of the reinstatement of the indebtedness and of the policy. A lapsed U.S. Government Life Insurance policy which is in force under extended term insurance may be reinstated without health statement or other medical evidence, if application and tender of premiums with the required interest are made not less than 5 years prior to the date such extended insurance would expire. In any case in which the extended insurance under an endowment policy provides protection to the end of the endowment period, such policy may be reinstated upon application and payment of the premiums with the required interest, and health statement or other medical evidence will not be required. U.S. Government Life Insurance on the 5-year level premium term plan may be reinstated upon application by the insured within 5 years after the date of lapse with satisfactory evidence of the insurability of the insured and upon payment of two monthly premiums, one for the month of lapse, the other for the premium month in which reinstatement is effected, subject to the conditions of § 6.170(b) if reinstated after expiration of the 5-year-term period. Any indebtedness against the policy must be paid or reinstated with interest. The provisions of the "Reinstatement" clause in U.S. Government Life Insurance policies are hereby amended accordingly.

(b) Reinstatement is effected when an acceptable application and the required premiums are delivered to the Veterans Administration. If application for reinstatement is submitted by mail, properly addressed to the Veterans Administration, the postmark date shall be the date of delivery. The effective date of reinstatement of the insurance shall be the last monthly premium due date prior to the delivery or postmark date of the application for reinstatement, except where reinstatement is effected on the due date of a premium, then in such case, that date shall be the reinstatement date.

[24 FR 7321, Sept. 11, 1959, as amended at 36 FR 17855, Sept. 4, 1971]

§ 6.79 Health requirements.

U.S. Government life insurance may be reinstated:

(a) Within 6 calendar months including the calendar month for which the unpaid premium was due, provided the applicant be in as good health on the date of application and tender of premiums as he was on the last day of the grace period of the premium in default and furnishes satisfactory evidence thereof.

(b) After expiration of the 6 calendar months mentioned in paragraph (a) of this section, provided applicant is in good health on the date of application and tender of premiums and furnishes satisfactory evidence thereof.

[33 FR 363, Jan. 10, 1968]

§ 6.80 Application and medical evidence.

The applicant for reinstatement of U.S. Government life insurance, during his lifetime and before becoming totally and permanently disabled, must submit a written application signed by him and furnish evidence of health as required in § 6.79 at the time of application. Applicant's own statement of comparative health may be accepted as proof of insurability for the purpose of reinstatement under § 6.79(a), but, whenever deemed necessary in any such case by the Administrator, report of physical examination may be required. Applications for reinstatement submitted after expiration of the applicable period mentioned in § 6.79(a) must be accompanied by satisfactory evidence of good health: *Provided*, That if the insurance becomes a claim after the tender of the amount necessary to meet reinstatement requirements but before full compliance with the requirements of this section, and the applicant was in the required state of health at the date that he made the tender of the amount necessary to meet reinstatement requirements, and that there is satisfactory reason for his noncompliance the Director, Insurance Service, in Central Office and the Insurance Officer, Veterans Administration Center, Philadelphia, Pa., may, if the applicant be dead, waive any or all of the requirements of this section (except payment

of the necessary premiums) or, if the applicant be living, allow compliance with this section as of the date the required amount necessary to reinstate was received by the Veterans Administration.

[33 FR 363, Jan. 10, 1968]

§ 6.81 Indebtedness at time of reinstatement.

The United States Government life insurance shall not be deemed to be reinstated until satisfactory evidence of good health has been furnished and approved as required, and, except as provided in § 6.78, until all premiums in arrears have been paid with the required interest, and any indebtedness existing at the time of default has been paid or reinstated as set forth in the policy: *Provided*, That any indebtedness on account of unpaid service premiums and premiums waived under authority of section 306 of the World War Veterans' Act, 1924, as amended, or section 760 of Title 38, United States Code, may be reinstated, even though the amount of such indebtedness exceeds the reserve of the policy; and such indebtedness unless otherwise paid shall be deducted from the proceeds of insurance in any settlement thereof, or from the cash value when such value is taken in cash or used for the purpose of purchasing paid-up or extended insurance or making a loan: *Provided further*, That the amount of such unpaid premiums with interest shall not be considered an indebtedness as is set forth in paragraph 5(D) of the contract of Government life insurance or paragraph 8 of the special endowment at age 96 plan policy to cause the policy to cease and become void if the amount (premiums with interest) is greater than the cash surrender value of an insurance without indebtedness, so long as current premiums are being paid by the insured when due or the payment on the due date thereof is being waived as provided by Veterans Administration regulations.

[27 FR 9601, Sept. 28, 1962]

§ 6.86 Applications for reinstatement of United States Government life insurance pursuant to section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.

(a) Any person who, while in the active service on or after April 25, 1951, and prior to January 1, 1957, surrendered a permanent plan policy of United States Government life insurance which was in force other than as extended term insurance, for its cash value under the provisions of § 6.115 or under § 6.186 if the policy had no cash value, upon written application made by any such person on or after January 1, 1959, within the period set forth in paragraph (b) of this section and upon meeting the other conditions of that paragraph, may reinstate such surrendered United States Government life insurance (or any portion thereof in multiples of $500, not less than $1,000) without medical examination upon payment of (1) an amount required to provide the full reserve of the insurance at the end of the month prior to the month in which application is made and (2) the full premium on the amount of insurance for the month in which application is made. If the applicant is mentally incompetent the application for reinstatement under this section may be made only by the guardian (committee or conservator) and, if required under the State law, after the court shall have authorized the fiduciary to make such application.

(b) Any person whose permanent plan insurance was surrendered under the conditions provided in this section, and who had continuous indemnity protection from the date of surrender to January 1, 1957, continuous active service from January 1, 1957, to January 1, 1959, and continuous active duty thereafter, may make application for reinstatement under this section while on continuous active duty or within 120 days after separation from such service or duty. A person who reenters active service or duty on the date of separation or the following day shall be deemed to be in continuous active service or on continuous active duty.

(c) Reinstatement is effected when an acceptable application and the required premiums are delivered to the Veterans' Administration. If application for reinstatement is submitted by mail, properly addressed to the Veterans' Administration, the postmark date shall be the date of delivery. The effective date of reinstatement of the insurance shall be the last monthly premium due date prior to the delivery or postmark date of the application for reinstatement, except where reinstatement is effected on the due date of a premium, then in such case, that date shall be the reinstatement date.

[16 FR 12984, Dec. 27, 1951, as amended at 24 FR 7322, Sept. 11, 1959]

§ 6.88 Insurance previously terminated by reason of the insured's discharge from the service under other than honorable conditions.

Where United States Government life insurance or yearly renewable term insurance has heretofore been terminated because of the discharge or dismissal of the insured from the military or naval service on the grounds of mutiny, treason, spying, any offenses involving moral turpitude, or willful and persistent misconduct, or that he was an enemy alien, conscientious objector, or deserter, or that he concealed the fact that he was a minor at time of his enlistment:

(a) If the insured becomes, or has become, totally and permanently disabled, or dies, or has died, in circumstances and other conditions which mature, or would have matured, such insurance, and requires, or would have required, payments thereunder except for such discharge or dismissal from the service, such insurance will be deemed to be, or to have been, in force at the time of such total permanent disability or death, and claims thereunder will be paid in the same manner and under the same conditions as other valid insurance claims.

(b) In other such cases the insurance will be deemed to have lapsed at the expiration of the grace period ensuing upon the insured's separation from the service, and may be reinstated in the same circumstances, under the same conditions, and upon the same terms as apply to other cases of reinstatement of lapsed insurance. Any amount previously paid, upon termination of such insurance, to or on account of any such insured person, as cash value of a United States Government life insurance policy, shall be deducted from the payment of any insurance claim herein provided for; and the repayment of any such previously paid cash value of United States Government life insurance shall be an additional prerequisite of any reinstatement hereunder.

[13 FR 7094, Nov. 27, 1948]

Physical Examination and Inspections

§ 6.90 Examinations for insurance purposes.

(a) It is deemed necessary in order properly to safeguard the interests of the Government to require a physical examination by a full-time or part-time salaried physician at a field station of the Veterans Administration in the following instances:

(1) When an application has been filed by a person for payment of insurance benefits or waiver of premiums on account of total or total and permanent disability unless in accordance with prescribed insurance procedure a physical examination is not necessary;

(2) When requested by the Disability Insurance Claims activity for the purpose of review, as provided by Veterans Administration regulations, of claims in which insurance benefits are being paid or premiums are being waived, to determine if the person has recovered the ability to follow a gainful occupation;

(3) When requested by the Disability Insurance Claims activity in order to determine the existence of mental incompetency for the purpose of waiver of payment of an insurance premium on its due date. Examination will be made without charge to the claimant.

(b) Physical examinations required of applicants for United States Government life insurance, or for reinstatement of such insurance, may be made free of charge to the applicant by a full-time or part-time salaried physician at a field station of the Vet-

erans Administration upon the request of the applicant, or upon the specific request of the underwriting activity in connection with an application for reinstatement of insurance when deemed necessary in order properly to safeguard the interests of the Government. Physical examinations required of applicants for United States Government life insurance or for reinstatement of such insurance, may be made at applicant's own expense by a physician duly licensed for the practice of medicine by a State, Territory of the United States, or the District of Columbia, or by a duly licensed osteopathic physician who is a graduate of a recognized and approved college of osteopathy and who is listed in the current directory of the American Osteopathic Association. Such examination may be made by a physician or osteopath who is not related to the applicant by blood or marriage, associated with him in business, or pecuniarily interested in the issuance or reinstatement of the policy. Examinations made in a foreign country by a physician duly licensed for the practice of medicine and otherwise acceptable may be accepted if submitted through the American consul. The Administrator of Veterans Affairs may require such further medical examination or additional medical evidence as may be deemed necessary and proper to establish the physical and mental condition of the applicant at the time of the application.

[24 FR 7322, Sept. 11, 1959, as amended at 27 FR 9601, Sept. 28, 1962]

§ 6.91 Examinations and inspections for insurance purposes where applicant or claimant, by reason of his physical or mental condition, is unable to appear at an office of the Veterans Administration.

If an individual is unable to travel because of physical or mental condition, the Manager of a region office or Director of a hospital may, on his own initiative or at the request of the insurance activity concerned, authorize at Government expense examination at the home of the person to be examined in those instances in which, as provided by § 6.90, examination by a full-time or part-time salaried physician is deemed necessary properly to safeguard the interests of the Government. Examination at the home of an applicant for reinstatement of insurance can be authorized at Government expense only by the Underwriting activity.

[27 FR 9600, Sept. 28, 1962]

§ 6.92 Expenses incident to examinations for insurance purposes.

(a) Necessary transportation expenses incident to physical or mental examinations at regional offices or hospitals of the Veterans Administration may be furnished in the following instances: (1) When, upon filing of an application for payment of insurance benefits or waiver of premiums, an applicant is ordered to report for examination by the Veterans Administration to determine the existence of total or total and permanent disability; (2) when an individual receiving payments of insurance benefits or waiver of premiums, is ordered to report for the examination by the Veterans Administration to determine if he has recovered the ability to follow a gainful occupation; (3) when an individual is ordered to report for examination by the Veterans Administration to determine the existence of mental incompetency for the purpose of waiver of payment of an insurance premium on its due date.

(b) Necessary transportation expenses may be furnished, incident to a physical examination at a regional office or hospital of the Veterans Administration of an applicant for reinstatement of insurance: *Provided,* That the applicant was ordered to report for the examination at the specific request of the Underwriting activity.

(c) Such expenses will be borne by the United States and will be paid from the applicable appropriation of the Department of Medicine and Surgery. Transportation, meal, and lodging requests in connection with reporting to and returning from the place of examination will be furnished the applicant or claimant provided prior authority has been given for the travel. Travel incident to such an examination by salaried employees of the Vet-

erans Administration will be in accordance with the Standardized Government Travel Regulations. If such examination is made by a medical examiner on a fee basis, payment will be made at a fee not in excess of the schedule of fees in effect and approved by the Veterans Administration for medical and professional services in the State in which the examination is made. Where no approved State fee schedule is in effect or where a fee for the type of examination authorized is not listed in the approved State fee schedule in effect, such examinations will be furnished at a fee not in excess of that listed in the "Guide for Charges for Medical and Ancillary Services" of the Department of Medicine and Surgery in effect at the time the examination is authorized. If the particular examination is not covered by a schedule in effect and/or the said guide, a fee not in excess of what is reasonable and customarily charged in the community concerned may be allowed.

(d) Transportation expenses will not be furnished for examinations on applications for reinstatement of insurance or on applications for payment of insurance benefits or waiver of premiums on account of total or total and permanent disability where the applicants where not ordered to report for the examination by the Veterans Administration, or on applications for new insurance.

[24 FR 7323, Sept. 11, 1959, as amended at 27 FR 9600, Sept. 28, 1962]

Dividends

§ 6.95 How paid.

(a) A United States Government life insurance policy, except as hereinafter provided in this section, shall participate in and receive such dividends from gains and savings as may be determined by the Administrator of Veterans Affairs: *Provided,* That United States Government life insurance on which premiums are waived in whole or in part under the provisions of section 622 of the National Service Life Insurance Act, as amended, or section 724 of Title 38, United States Code, shall not be entitled to dividends for the period during which such premium waiver is in effect. Regular annual dividends becoming payable on or after December 31, 1958, shall be payable on the date preceding the anniversary of the policy unless the Administrator shall declare them payable on some other date.

(b) Unless and until the Veterans Administration receives a written request from the insured that U.S. Government life insurance regular annual dividends be paid in cash, or that they be used to pay an insurance indebtedness, or that they be placed on deposit or be used to pay premiums in advance, or that they be used to pay the premiums on a particular policy or policies, any such dividends shall be held to the credit of the insured to be applied to pay monthly premiums becoming due and unpaid after the date such dividends are payable on any U.S. Government or National Service life insurance policy or policies held by the insured: *Provided,* That such dividend credits will be applied as of the due date of any unpaid premium. Dividend credits will earn interest at such rate and in such manner as the Administrator may determine.

(c) In the event premiums on more than one policy having the same premium due date are unpaid and the dividend credit of the insured for application to payment of premiums is not sufficient to keep all policies in force, in the absence of instructions to the contrary by the insured, such dividend credit will be applied to pay premiums in such manner as will provide the maximum amount of insurance protection.

(d) At the expiration of any term period, dividend credit of the insured held for payment of premiums will be applied to pay the required premium for renewal of term insurance unless the insured requests otherwise in writing prior to the expiration of the term period.

(e) A request for payment of dividends in cash or for other disposition will be effective as of the date the request is delivered to the Veterans Administration: If forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery; if forwarded through military channels by the insured while in military serv-

ice, the date the request is placed in military channels will be accepted as the date of delivery. Unless otherwise stipulated by the insured, such request will remain in force until revoked in writing signed by the insured and delivered to the Veterans Administration.

(f) Dividend credit of the insured held for payment of premiums as provided in section 746 of Title 38, United States Code, may not be used to satisfy any indebtedness due the United States without the insured's consent. If the insured requests payment of such dividend credit, or any unused portion thereof, in cash, or requests that such credit be left to accumulate on deposit, as provided in paragraph (g) of this section, then any indebtedness due the United States, such as described in § 6.62 will be recovered therefrom.

(g) At the written request of the insured, United States Government life insurance regular annual dividends may be left to accumulate on deposit at interest which will be credited in such manner and at such rate as the Administrator may determine, but a rate never less than 3½ percent: *Provided*, That the policy is in force on a basis other than extended term insurance or 5-year level premium term insurance. Dividend credit of the insured held for payment of premiums or dividends left to accumulate on deposit may be applied to the payment of premiums in advance upon written request of the insured made before default in payment of a premium. Dividends on deposit under the provisions of this paragraph will be used in addition to the reserve on the policy for the purpose of computing the period of extended term insurance or the amount of paid-up insurance as provided in §§ 6.105 and 6.110, respectively. Any dividend credit of a person who no longer has insurance in force by payment or waiver of premiums will be paid in cash to such person. If a person has a dividend credit option on a lapsed 5-year level premium term policy or a permanent plan policy on which extended term insurance has expired and such person has another policy in force by payment or waiver of premiums, any dividend credit or unpaid dividends on the lapsed policy, in the absence of instructions from the insured to the contrary, will be transferred to the policy which is in force and will be held on such policy as a dividend credit. Such dividend credit will be deemed to have accrued on the policy which is in force. Upon maturity of the policy, any dividend on deposit, any unpaid dividend payable in cash, and any dividend credit accruing from such policy which cannot be used to pay premiums as provided in section 746 of Title 38, United States Code, will be paid to the person currently entitled to receive payments under the policy. If the policy is not in force at death, any such unpaid dividends and dividend credits will be paid to the insured's estate.

[24 FR 15, Jan. 1, 1959, as amended at 25 FR 7369, Aug. 5, 1960; 28 FR 12544, Nov. 23, 1963; 32 FR 13927, Oct. 6, 1967]

§ 6.96 Special dividends.

Any special U.S. Government Life Insurance dividend that may be declared shall be paid in cash. Such special dividends shall not be accepted to accumulate on deposit or as a dividend credit. Except as provided in § 6.19, unpaid special dividends shall not be available to pay premiums.

[36 FR 368, Jan. 12, 1971]

Loans

§ 6.100 Policy loan; other than 5-year convertible term policy.

At any time after the premiums for the first policy year have been paid and earned and before default in payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the sole security of his United States Government life insurance policy any amount which shall not exceed 94 percent of the cash value, and any indebtedness shall be deducted from the amount advanced on such loan. The loan shall bear interest at a rate not to exceed 6 percent per annum, payable annually, and, at any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or

more. Failure to pay either the amount of the loan or the interest thereon shall not void the policy unless the total indebtedness shall equal or exceed the cash value thereof. When the amount of the indebtedness equals or exceeds the cash value, the policy shall cease and become void.

[24 FR 3592, May 5, 1959]

§ 6.101 Policy loan; 5-year convertible term policy.

At any time after the expiration of the sixth policy year and before default in payment of any subsequent premium and upon execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the sole security of his United States Government life insurance policy on the 5-year convertible term plan any amount which shall not exceed 94 percent of the cash value, and any indebtedness shall be deducted from the amount advanced on such loan. The loan shall bear interest at a rate not to exceed 6 percent per annum, payable annually, and at any time before default in payment of premium, the loan may be repaid in full or in amounts of $5 or more. Failure to pay either the amount of the loan or the interest thereon shall not void the policy unless the total indebtedness shall equal or exceed the cash value thereof. When the amount of the indebtedness equals or exceeds the cash value, the policy shall cease and become void.

[21 FR 3875, June 6, 1956]

§ 6.102 Rate of interest on policy loans on and after July 19, 1939.

(a) On and after July 19, 1939, and except as provided in paragraph (b) of this section, the interest on all policy loans then outstanding or thereafter granted will be at the rate of 5 per centum per annum.

(b) On and after August 1, 1946, the interest on all policy loans then outstanding or thereafter granted will be at the rate of 4 per centum per annum.

(c) All loans applied for on and after January 11, 1971, will be granted at the interest rate of 5 per centum per annum.

[24 FR 7323, Sept. 11, 1959, as amended at 36 FR 368, Jan. 12, 1971]

EXTENDED TERM INSURANCE

§ 6.105 Provision for extended term insurance.

(a) After the expiration of the first policy year and upon default in the payment of a premium within the grace period, if a United States Government life insurance policy on any plan other than 5-year level premium term has not been surrendered for cash or for paid-up insurance, the policy shall be extended automatically as term insurance for an amount of insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the cash value less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the extended term insurance becomes effective. The extended term insurance shall be with right to dividends and, except for extended term insurance under a special endowment at age 96 plan policy, with right to total permanent disability benefits. The number of monthly installments payable upon due proof of total permanent disability or death of the insured under such extended term insurance will be the same as would then be payable under the policy. The extended term insurance shall not have a loan value, but shall have a cash value.

(b) Upon default in payment of premium within the grace period and after the effective date of this paragraph on any plan of United States Government life insurance other than 5-year level premium term, if the policy has been in force by payment or waiver of the premiums for not less than 3 months nor more than 11 months, the policy shall be extended automatically as term insurance for an amount of insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the re-

serve of the policy less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of months from that date to the date extended term insurance becomes effective. The extended term insurance, except extended term insurance under a special endowment at age 96 plan policy, shall be with right to total permanent disability benefits. The number of monthly installments payable upon due proof of total permanent disability or death of the insured under such extended term insurance will be the same as would then be payable under the policy. Extended term insurance under this provision shall not have a cash or loan value. This paragraph shall be effective from and after August 2, 1948.

[27 FR 9601, Sept. 28, 1962]

§ 6.106 Extended insurance in case of total permanent disability, except extended insurance under the special endowment at age 96 plan policy.

In case total permanent disability occurs during the period of extended insurance under a United States Government life insurance policy and payments are made on account of such disability and recovery from such disability also takes place, then: (a) If the recovery takes place before the end of the period of extended insurance, the insurance shall be reduced accordingly, and the insurance, as reduced, shall be continued in force; (b) if the recovery takes place after the end of the period of extended insurance, all rights and claims hereunder shall cease, except as to the privilege to reinstate.

[27 FR 9601, Sept. 28, 1962]

Paid-up Insurance

§ 6.110 Provision for paid-up insurance.

If a United States Government life insurance policy has not been surrendered for cash, upon default in the payment of any premium due after the expiration of the first policy year, and upon written request of the insured and complete surrender of the insurance with all claims thereunder within 3 calendar months after the due date of the premium, the United States will issue paid-up insurance for such amount as the cash value less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the paid-up insurance becomes effective. The paid-up insurance shall be with right to dividends and, except paid-up insurance under the special endowment at age 96 plan policy, with right to total permanent disability benefits. The number of monthly installments payable upon due proof of total permanent disability or death of the insured under such paid-up insurance will be the same as would then be payable under the policy. The insured may at any time surrender the paid-up policy for its cash value or obtain a loan on such paid-up insurance.

[27 FR 9602, Sept. 28, 1962]

§ 6.111 Paid-up insurance in case of total permanent disability, except for paid-up insurance under the special endowment at age 96 plan policy.

If one or more monthly installments be paid on account of total permanent disability incurred under a paid-up insurance, then there shall be paid to the beneficiary upon the surrender of insurance at the death of the insured the remaining unpaid installments (240 less the number paid). If an optional settlement has been selected, payments shall be made accordingly.

[27 FR 9602, Sept. 28, 1962]

Cash Value

§ 6.115 Cash value, other than 5-year level premium term policy and special endowment at age 96 plan policy.

Provisions for cash value, paid-up insurance, and extended term insurance, except as provided in § 6.105(b), shall become effective at the completion of the first policy year on any plan of United States Government life insur-

ance other than the 5-year level premium term plan or the special endowment at age 96 plan policy; all values, reserves, and net single premiums being based on the American Experience Table of Mortality, with interest at the rate of 3½ percent per annum. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full or waived, shall be the reserve together with any dividend accumulations. For each month after the first policy year, for which month a premium has been paid or waived, the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder made by the insured while the policy is in force, but not later than 3 calendar months from the due date of the premium in default, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of the premiums for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery. The provisions of the "cash value" clause in United States Government life insurance policies are hereby amended accordingly.

[27 FR 9602, Sept. 28, 1962]

§ 6.116 Cash value; 5-year convertible term policy.

The cash value, paid-up insurance, extended insurance, and policy loan provisions under a United States Government life insurance policy on the 5-year convertible term plan shall be effective at any time after the completion of the sixth policy year, all values, reserves, and net single premiums being based on the American Experience Table of Mortality, with interest at the rate of 3½ percent per annum. The cash value at the end of the sixth policy year and at the end of any policy year thereafter for which premiums have been paid in full shall be the reserve together with any dividend accumulations. For each month after the sixth policy year for which month the premium has been paid, the reserve at the end of the preceding year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder made by the insured while the policy is in force, but not later than 3 calendar months from the due date of the premium in default, the United States will pay to the insured the cash value of the policy less any indebtedness. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery. The provisions of the "cash value" clause in 5-year convertible term policies are hereby amended accordingly.

[24 FR 5021, June 20, 1959]

§ 6.117 Cash value; special endowment at age 96 plan policy.

Provisions for cash value, paid-up insurance and extended term insurance, except as provided in § 6.105(b), shall become effective at the completion of the first policy year; all values and net single premiums are as prescribed by the Administrator and published in VA Pamphlet 90-2A. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full or waived, shall be the reserve as

set forth in the policy together with any dividend accumulations. For each month after the first policy year, for which month a premium has been paid or waived, the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder made by the insured while the policy is in force, but not later than 3 calendar months from the due date of the premium in default, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of the premiums for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery.

[27 FR 9602, Sept. 28, 1962]

§ 6.117a Payment of cash value in monthly installments.

Effective January 1, 1971, in lieu of payment of the cash value in one sum under the provisions of §§ 6.115, 6.116, and 6.117, the insured may elect to receive payment in monthly installments under option 2 (§ 6.68) or as a refund life income option in accordance with the provisions of § 6.69a. If the insured dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable as provided in § 6.69. Unless otherwise requested by the insured, a surrender under this section will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the first check released thereunder, whichever is later.

[36 FR 4383, Mar. 5, 1971]

Indebtedness

§ 6.118 Collection of unpaid premiums.

When it becomes necessary to collect and deduct unpaid premiums and interest due under yearly renewable term or United States Government life insurance, such unpaid premiums and interest shall be deducted from the amount of the insurance (commuted value of the installments then due and payable), thus reducing the amount of each monthly installment in the proportion that the amount of the indebtedness bears to the amount of insurance.

[24 FR 7323, Sept. 11, 1959]

§ 6.119 Collection of any indebtedness.

At the maturity of a United States Government life insurance policy by total permanent disability or death, any indebtedness, unless paid off in cash, shall be liquidated by reducing the amount of each monthly installment in the proportion which the indebtedness bears to the commuted value of monthly installments as may then be payable under the policy, excluding dividend accumulations. If the policy is payable in one sum at death, any indebtedness shall be deducted from the amount payable under the policy.

[13 FR 7096, Nov. 27, 1948]

Total Permanent Disability Benefits

§ 6.120 Total permanent disability benefits.

Upon due proof of the total permanent disability of the insured while a United States Government life insurance policy other than a special endowment at age 96 plan policy is in force, the monthly installments, except as otherwise provided, shall be payable to the insured and continue to be so payable during total permanent disability so long as he lives, and payment of all premiums due after receipt of such proof during total permanent disability shall be waived.

[27 FR 9602, Sept. 28, 1962]

§ 6.121 Definitions of total permanent disability.

Total permanent disability as referred to in a United States Government life insurance policy is any impairment of mind or body which continuously renders it impossible for the disabled person to follow any substantially gainful occupation and which is founded upon conditions which render it reasonably certain that the total disability will continue throughout the life of the disabled person. The total permanent disability benefits may relate back to a date not exceeding 6 months prior to receipt of due proof of total permanent disability, and any premium paid after receipt of due proof of total permanent disability and within the 6 months shall be refunded without interest. The provisions of this section shall not be applicable to the special endowment at age 96 plan policy.

[28 FR 1542, Feb. 19, 1963]

§ 6.122 Disabilities deemed to be total and permanent.

Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, or becoming permanently helpless or permanently bedridden shall be deemed to be total and permanent disability under United States Government life insurance, and monthly installments of insurance for any of these specifically enumerated causes of total and permanent disability shall accrue from the date of such total and permanent disability, and any premiums paid after the date of such total and permanent disability shall be refunded without interest. Organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if such loss is caused by organic changes in such organs. Where such loss exists, the fact that some speech can be produced through the use of an artificial appliance or other organs of the body will be disregarded. (The provisions of this section shall not be applicable to contracts of United States Government life insurance originally issued on and subsequent to December 15, 1936, or the special endowment at age 96 plan policy.)

[27 FR 9603, Sept. 28, 1962]

§ 6.123 Recovery from total permanent disability other than the special endowment at age 96 plan policy.

Notwithstanding proof of total permanent disability may have been accepted as satisfactory, the insured shall at any time, on demand, furnish proof satisfactory to the Administrator of Veterans Affairs of the continuance of such total permanent disability, and, if the insured shall fail to furnish such proof, all payments of monthly installments on account of such total permanent disability under a United States Government life insurance policy shall cease and all premiums thereafter falling due shall be payable in conformity with policy. Thereafter, the premium to be paid and the cash values, paid-up insurance values, and loan values shall be reduced so that the resulting premium and values shall bear the same proportion to the premiums and values, respectively specified on the policy, that the commuted values of the remaining installments (240 installments less the number paid) bears to the commuted value of 240 installments. The extended insurance values shall be modified accordingly. (See also § 6.124.)

[27 FR 9603, Sept. 28, 1962]

§ 6.123a Recovery from disability; 5-year level premium term policy.

Notwithstanding proof of total permament disability may have been accepted as satisfactory, the insured under a United States Government life insurance policy on the 5-year level premium term plan shall at any time, on demand, furnish proof satisfactory to the Administrator of Veterans Affairs of the continuance of such total permanent disability. If the insured shall fail to furnish such proof, all payments of monthly installments on account of such total permanent disability shall cease, and all premi-

ums thereafter falling due shall be payable in conformity with the 5-year level premium term policy. Thereafter the premium to be paid shall be reduced so that the resulting premium shall bear the same proportion to the premium specified on the policy that the commuted value of the installments (240 less the number paid) bears to the commuted value of 240 installments. If recovery from total permanent disability takes place after the expiration of the term period, the insurance may be continued in accordance with § 6.123b.

[24 FR 7323, Sept. 11, 1959]

§ 6.123b Continuance of insurance after termination of total and permanent rating and award, where such termination is effective after the expiration of the term period.

If United States Government life insurance on the 5-year level premium term plan (or on the 5-year convertible term plan) matures or has matured by reason of total and permanent disability and the insured recovers from such disability after expiration of the term period, the reduced amount of insurance (commuted value of remaining unpaid installments) shall be automatically renewed at the premium rate for the attained age of the insured on the policy anniversary renewal date of the current 5-year period. The reduced amount of insurance or any part thereof in multiples of $500 and not less than $1,000 may be continued without medical examination on the level premium term plan or on any permanent plan, as the insured may elect, except the special endowment at age 96 plan policy, and subject to the following provisions:

(a) Such insurance may be continued in force as 5-year level premium term insurance upon payment of premiums, as required in paragraph (c) of this section, at the rate required for the attained age of the insured on the policy anniversary renewal date for the current 5-year period. A certificate of renewal will be issued effective on the policy anniversary renewal date.

(b) Such insurance may be converted to any of the permanent plans, except the special endowment at age 96 plan policy, upon application therefor and payment of premiums at the rate required for the then attained age, and a policy will be issued to the insured effective as of the date on which the first premium became payable.

(c) The insurance shall lapse unless the first premium is paid in accordance with this paragraph. The first premium on the reduced amount of insurance for the plan selected is payable on the first day of the month following the month for which the last installment under the total and permanent disability rating was paid to the insured, but may be paid within 31 days from the date of notice advising of the amount of insurance and the monthly premium rate. Thereafter, subsequent premiums will be payable in accordance with the terms and conditions of the policy.

[24 FR 7324, Sept. 11, 1959, as amended at 27 FR 9603, Sept. 28, 1962]

§ 6.123c Monthly installments withheld at the request of the insured or otherwise accrued to credit of the insured after maturity by total and permanent disability.

(a) Where an insured is determined in accordance with the applicable Veterans Administration regulations to be totally and permanently disabled while a United States Government life insurance policy is in force and entitled to waiver of premiums and to payment of monthly installments on account of such disability but such payments are not made to the insured, the insurance shall mature and such total permanent disability installments shall accrue. If it is determined that the insured is no longer totally and permanently disabled, further monthly installments on account of such total permanent disability shall cease as of the date of such determination. Thereafter, the reduced amount of insurance may be continued in accordance with the provisions of §§ 6.123, 6.123a, 6.123b, and 6.124, whichever is applicable. The accrued total and permanent disability installments for the purpose of such Veterans Administration regulations shall be considered to have been paid to the insured.

(b) Any accrued total permanent disability installments remaining unpaid for the period prior to the date of determination that the insured is no longer totally and permanently disabled shall be payable, without interest, in a lump sum to the insured. Any accrued total permanent disability installments which are not paid to the insured during his lifetime shall be paid, without interest, in a lump sum upon his death to the beneficiary entitled to the proceeds of the insurance. The accrued total permanent disability installments shall be considered to have been paid to the insured for the purpose of determining cash value, loan value, paid-up insurance and extended insurance and the amount of insurance payable at death of the insured or at the maturity of an endowment policy.

[26 FR 1993, Mar. 8, 1961]

§ 6.124 Grace period for payment of first premium payable on United States Government life insurance and total disability insurance after termination of a total and permanent disability insurance award and a total disability insurance award.

United States Government life insurance and total disability insurance shall not lapse during the period between the termination of a total and permanent disability insurance award or the termination of a total disability insurance award and 31 days from the due date of the first premium payable after such termination or 31 days from date of notice mailed to the insured's last address of record advising of the termination of the award and the amount and due date of the first premium so payable, whichever is the later date. If the premium or premiums be not paid within said 31 days, the insurance policy and the total disability provision shall lapse in accordance with the terms and conditions thereof and shall otherwise be subject to the terms and conditions of said policy and provision. A letter by registered mail or by certified mail will be mailed to the insured at his last address of record advising of the due date of the first premium payable after termination of the award, and of the amount of insurance, and the amount due as premiums. The mailing of such letter to the insured's last address of record will be sufficient notice within the provisions of this section, and the failure of the insured to furnish a correct current address at which mail will reach him promptly shall not be grounds for an extension of time under this section.

[25 FR 8776, Sept. 13, 1960]

Death Benefits

§ 6.125 Due proof of the death of the insured.

Upon due proof of the death of the insured while a United States Government life insurance policy is in force, the monthly installments, without interest, which have accrued since the death of the insured, the first installment being due on the date of the death of the insured, shall be paid to the beneficiary designated, and thereafter the payment of the monthly installments shall continue to be so payable until 240 installments in all, including any paid to the insured during his lifetime on account of total permanent disability, shall have been paid; but if 240 or more installments shall have been paid to the insured on account of total permanent disability, no death benefit shall be payable. If optional settlement 1, 2, 3, or 4 has been selected, payment shall be made accordingly, subject to deduction on account of total permanent disability payments.

[16 FR 12984, Dec. 27, 1951]

§ 6.126 Death by suicide.

Payment of claims arising under yearly renewable term insurance and United States Government life insurance, validly granted, and where said insurance was in force at the time of the death of the insured, shall not be refused or contested on the ground that death was by suicide, sane or insane.

[24 FR 7324, Sept. 11, 1959]

§ 6.127 Evidence to establish death of the insured.

Whenever a claim is filed on account of the death of a person insured under

yearly renewable term insurance or United States Government life insurance, the proof of death shall be established in accordance with the provisions of §§ 3.204, 3.211 and 3.212 of this chapter.

[26 FR 1856, Mar. 3, 1961]

§ 6.128 Payment to decedent's estate.

If no legal representative has been or will be appointed, United States Government life insurance benefits, including dividends and premium refunds which are payable to the estate of a deceased insured or beneficiary, may be paid direct to the person or persons (distributee or distributees) entitled to the decedent's personal property under the laws of the State of his or her domicile, if the amount payable does not exceed $5,000: *Provided, however,* That if under the law of decedent's domicile the claimant is unconditionally and directly entitled to an amount from decedent's estate independently of entitlement as a distributee, at least equal to the amount payable by Veterans Administration, payment, notwithstanding it exceeds $5,000, may be made directly to the claimant.

[42 FR 6807, Feb. 4, 1977]

Yearly Renewable Term Insurance

Source: §§ 6.130 to 6.145 appear at 13 FR 7096, Nov. 27, 1948, unless otherwise noted.

§ 6.130 Premium.

The monthly premium on yearly renewable term insurance shall be due and payable on the 1st day of the calendar month and, if paid when due or within the grace period, the premium shall be deemed to carry the insurance in force for the then current calendar month. If a premium be not paid when due or within the grace period, the insurance shall lapse and terminate as of the due date of the premium.

§ 6.131 Grace period.

The premium on yearly renewable term insurance due and payable on the 1st day of any calendar month may be paid at any time within 31 days from and excluding the 1st day of said month, which period of 31 days shall constitute a grace period for the payment of the premium. The insurance shall remain in force during the grace period but if the insured becomes totally and permanently disabled or dies during such grace period the unpaid premiums will be deducted from the amount of insurance. If a premium is not paid when due or within the grace period, the effective date of lapse shall be the due date of the premium in default.

§ 6.132 Annual increase in premium rate.

The yearly renewable term insurance was issued at the monthly premium rate for the age nearest birthday of the insured when the insurance became effective. The monthly premium rate on the insurance shall increase on July 1 of each year to the rate for an age one year older according to the schedule of premium rates set forth on the reverse side of Treasury Department Form 2-A, Bureau of War Risk Insurance, entitled "Application for Insurance."

§ 6.133 Age understated; insurance in force.

If the age of the insured under yearly renewable term insurance has been understated and the insurance is in force and has not matured, the insured shall be notified to pay the premium arrearage due with interest at the rate of 5 percent per annum in order to maintain the amount of insurance originally applied for. If the insured has not paid, the arrearage within 60 days after notice, the amount of insurance shall be reduced to the greatest amount which is a multiple of $500 below the exact amount of insurance purchased by the premium being paid. In such cases the excess premiums over those necessary for the purchase of the reduced amount of insurance (in multiples of $500) shall be returned to the insured without interest.

§ 6.134 Age understated; at maturity.

If there has been a misstatement of the age of the insured under yearly renewable term insurance and the insurance has matured, the amount of insurance payable shall be such exact amount not in excess of $10,000 which

the premium paid would have purchased at the correct age irrespective of whether such amount of insurance is a multiple of $500.

§ 6.135 Age overstated; in force or at maturity.

If the age of the insured under yearly renewable term insurance has been overstated and premiums have been paid which would have purchased insurance in excess of $10,000, then the excess premiums without interest shall be returned to the insured if living, otherwise to the beneficiary.

§ 6.136 Insured incompetent.

In any case where on July 2, 1927, conversion of yearly renewable term insurance into United States Government life insurance was impracticable or impossible due to the mental condition of the insured, such yearly renewable term insurance may be continued in force so long as such mental condition continues, by the payment of premiums as they become due or prior to the expiration of the grace period, or by a waiver of the payment of the premium on the due date thereof only as provided by § 6.25. Where the yearly renewable term insurance has been so continued in force after July 2, 1927, because of the mental condition of the insured, there shall be allowed the insured an additional period of two years from the date he recovers from his mental disability in which to convert the yearly renewable term insurance, provided the insurance does not lapse due to nonpayment of premium.

§ 6.137 Insured disappeared.

In any case where the insured under yearly renewable term insurance has disappeared and his whereabouts are unknown and such disappearance continued after July 2, 1927, and evidence satisfactory to the Administrator of the disappearance of the insured is furnished by the interested party or parties, and the yearly renewable term insurance granted to the insured in accordance with the provisions of the War Risk Insurance Act, as amended, and continued under the World War Veterans' Act, 1924, as amended, is in force by the payment of premiums to include the month of June, 1927, such yearly renewable term insurance may thereafter be continued in force by the payment of premiums each month as they become due, or prior to the expiration of the grace period, during the continued disappearance of the insured. If the whereabouts of the insured become known to the party or parties in interest the Veterans' Administration shall be immediately notified and the insured shall have two years from date of reappearance within which to apply for the conversion of his yearly renewable term insurance, provided, the insurance does not lapse due to nonpayment of premiums.

§ 6.138 Evidence of disappearance.

Evidence of disappearance of the insured under yearly renewable term insurance must be furnished by the beneficiary of record or anyone who may be interested in continuing the insurance protection on behalf of possible beneficiaries. Such evidence must be in the form of affidavits submitted by at least two persons who are in a position to know of the insured's disappearance by reason of their relationship, friendship, or business association with the insured, or if such affidavits are not procurable then affidavits will be accepted from any other persons in a position to know the facts. The affidavits should state what efforts, if any, have been made to locate the insured. The affidavits must be submitted on such forms as may be prescribed by the Administrator and must be sufficient to establish as a fact that the insured disappeared on or before July 2, 1927. The parties in interest will be required to obligate themselves to notify the Veterans' Administration if and when they receive information as to the insured's whereabouts.

§ 6.139 Total permanent disability.

Any impairment of mind or body which renders it impossible for the disabled person (insured under yearly renewable term insurance) to follow continuously any substantially gainful occupation shall be deemed to be total disability. Total disability shall be deemed to be "permanent" whenever

it is founded upon conditions which render it reasonably certain that it will continue throughout the life of the person suffering from it. Whenever it shall be established that any person to whom any installment of insurance has been paid on the ground that the insured has become totally and permanently disabled, has recovered the ability to continuously follow any substantially gainful occupation the payment of installments of insurance shall be discontinued forthwith and no further installments thereof shall be paid so long as such recovered ability shall continue.

§ 6.140 Disabilities deemed to be total and permanent.

Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, shall be deemed to be total and permanent disability under yearly renewable term insurance and automatic insurance. Monthly installments of insurance for any of these specifically enumerated causes of total and permanent disability shall accrue from the date of such total and permanent disability, and any premiums paid after the date of such total and permanent disability shall be refunded without interest.

§ 6.141 Total permanent disability award terminated.

When an insured under yearly renewable term insurance is receiving insurance benefits on account of a total and permanent disability award and such award is terminated, the insured may, if he so desires, renew the payment of premiums on the reduced amount of term insurance (the commuted value of the remaining unpaid installments).

§ 6.142 Continuance and conversion.

The first premium on the reduced amount of yearly renewable term insurance will be due and payable on the first day of the month following the month in which the last installment paid under the total and permanent disability award became due, and subsequent premiums will be due and payable on the first day of each month thereafter until the said reduced amount of yearly renewable term insurance is converted or expires as hereinafter provided. All of the reduced amount of yearly renewable term insurance, or any part thereof in multiples of $500 may be continued in force by the payment of premiums as they become due for two years from the due date of the first premium payable after termination of the total and permanent disability award, during which period the said term insurance may be converted into one or more of the plans of the United States Government life insurance, but if all or any part of such term insurance be not so converted, the same shall cease and terminate.

§ 6.143 Period allowed for resumption of payment of premiums after termination of a total permanent disability award.

The yearly renewable term insurance shall not lapse during the period between the termination of the total and permanent disability award and 31 days from date of notice to the insured advising him of the reduced amount of insurance and the amount of the premium, but, if any premium or premiums due and payable during that time be not paid within 31 days from date of said notice or within 31 days from the due date of the first premium, whichever is the later date, or if any subsequent premium be not paid on the due date or within the grace period of 31 days thereafter, the insurance shall lapse but may be reinstated as provided in § 6.144. A letter mailed by the Veterans' Administration to the insured at his last known address informing him of the termination of the insurance award and the amount and due date of the premium on the reduced amount of insurance will be sufficient notice within the provisions of this section. The nonreceipt of such letter will not excuse the nonpayment of premium.

[16 FR 12984, Dec. 27, 1951]

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§ 6.144 Reinstatement of insurance after termination of a total permanent disability award.

Yearly renewable term insurance may be reinstated in whole or in part at any time within the period of two years from the due date of the first premium payable after termination of the total permanent disability award by the tender of an amount sufficient to pay all premiums from date of lapse with interest at the rate of five per centum per annum, compounded annually from the due date of each premium, and by furnishing a report of a physical examination and such other evidence as to the applicant's physical and mental condition as may be required by the Administrator and on such forms as may be prescribed: *Provided,* That the applicant is not totally and permanently disabled: *And provided, further,*

(a) That the applicant is in as good health as he was on the due date of the premium in default, or

(b) If not in as good health, that his disability is the result of an injury or disease or an aggravation thereof suffered or contracted in the military or naval service during the period of the World War.

§ 6.145 Change of beneficiary.

The insured under yearly renewable term insurance shall have the right at any time, and from time to time, and without the consent or knowledge of the beneficiary, to change the beneficiary within the class of beneficiaries permitted by the World War Veterans' Act or any amendment or supplement thereto. A change of beneficiary to be effective shall be made either (a) by the last will and testament of the insured, or (b) by notice in writing to the Veterans' Administration signed by the insured or by his duly authorized agent. Whenever practicable such notices shall be given on blanks prescribed by the Veterans' Administration. No change of beneficiary shall be effective until the same has been received and recorded in the Veterans' Administration. Payments of installments of the insurance shall be made to the beneficiaries last of record in the Veterans' Administration until the change of beneficiary has been received and recorded.

Claims Alleging Insurance Contract Where There is no Application for Insurance on File

§ 6.150 Claims alleging insurance contract where there is no application for insurance on file.

In those cases where claim is made alleging that a person made valid application for yearly renewal term (War Risk) insurance or United States Government life insurance, and that the insurance is subject to reinstatement, or that such insurance matured by reason of the total and permanent disability or death of the person at a time when the insurance was in force, and, in case of death, that there was a valid designation of beneficiary, or that there is entitlement to total disability benefits, and where there is no application for insurance on file, the claimant will be required to submit all available evidence concerning the alleged application for insurance in such manner and on such forms as may be deemed necessary. The evidence submitted by the claimant and the evidence as disclosed by records in possession of the Government relative to the question as to whether the person made a valid application for insurance will be considered and, if found sufficient to establish as a fact that the said person did apply for insurance and if the other allegations of said claim are sustained, a record of insurance will be established in accordance with such finding. However, if it be determined that the evidence is not sufficient to establish as a fact that the said person applied for insurance as alleged, or determined that any insurance applied for as alleged would not be valid or not subject to reinstatement, or determined that the said person did not become permanently and totally disabled, or die at a time when the insurance would have been in force if insurance had been applied for, or, in case of death, if it be determined that there was no valid designation of beneficiary, the claimant will be so informed. The claimant will be notified of his right to initiate an appeal by filing a notice of disagree-

ment and the time limitation for filing such notice. Further, the claimant will be informed that unless he desires to initiate and perfect an appeal to the Board of Veterans Appeals, a disagreement exists as to the matters in controversy as contemplated by the provisions of 38 U.S.C. 784 as far as the Veterans Administration is concerned. The Director, Insurance Service, or Deputy Director for Underwriting, Accounts and Insurance Claims will make all original determinations as to whether a person made valid application for insurance as alleged. The determination as to the validity of beneficiary designations, in death cases, will be made by the claims activity having jurisdiction over the insurance death claim.

[29 FR 1462, Jan. 29, 1964]

PAYMENT OF INSURANCE BENEFITS TO MINORS FOLLOWING DISCHARGE FROM THE ACTIVE MILITARY, NAVAL OR AIR SERVICE

§ 6.153 Payment of insurance benefits to minors following discharge from the active military, naval or air service.

The minority of a person who has been discharged from the active military, naval or air service of the United States will not preclude direct payment of either United States Government life insurance of National Service life insurance to such person. (Sec. 3202(a) of Title 38, United States Code.)

[24 FR 7324, Sept. 11, 1959]

"GOOD HEALTH"

§ 6.155 Definition and criteria.

(a) *Definition.* The words "good health" when used in connection with insurance mean that the applicant is, from clinical or other evidence, free from disease, injury, abnormality, infirmity, or residual of disease or injury to a degree that would tend to weaken or impair the normal functions of the mind or body or to shorten life.

(b) *Criteria.* Underwriting standards for determining whether an individual is in "good health," based as far as practicable on general insurance usage, will be developed and published by the Chief Benefits Director. He is responsible for readjusting such standards to reflect medical advances and current experience affecting mortality and disability.

[33 FR 3176, Feb. 20, 1968]

TOTAL DISABILITY PROVISION FOR UNITED STATES GOVERNMENT LIFE INSURANCE

§ 6.159 Withdrawal of the total disability provision authorized by section 311 of the World War Veterans' Act, 1924, as amended May 29, 1928 (§ 6.160).

Section 311 was added to the World War Veterans' Act, 1924, as amended, by section 16 of the amendment approved May 29, 1928 (45 Stat. 970). Section 25 of the amendment to the World War Veterans' Act, 1924, as amended, approved July 3, 1930, amended and superseded section 311 and thereby terminated as of July 3, 1930, the authority for issuing the total disability provision incorporated in § 6.160. However, as to the total disability provision which was issued and made a part of certain United States Government life insurance policies on applications submitted prior to July 3, 1930, the said § 6.160 will remain in full force and effect.

[13 FR 7099, Nov. 27, 1948]

§ 6.160 Rights and privileges.

The total disability provision for United States Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended May 29, 1928 (45 Stat. 970), is as follows:

(a) Under the authority of section 311 of the World War Veterans' Act as amended May 29, 1928, the following disability provision is hereby added to and becomes a part of policy K————, effective ————————, on the life of ————————.

(b) In consideration of the application therefor and evidence of good health, and payment of the additional monthly premium of $———— payable under the same terms and conditions as the regular monthly premium on the insurance contract, until the maturity of this policy by death, total permanent disability or as an endowment, or until receipt of proof of total disability for twelve consecutive months or longer, the United States hereby agrees to pay disability benefits of $5.75 per month for each

$1,000 insurance as shown on the face of the policy, upon receipt of due proof, before default in payment of any premium; that the insured hereunder is totally disabled, and has been so totally disabled for a period of twelve consecutive months or more. Monthly payments shall continue during the continuance of such total disability, and during the period of such payments all premiums on such insurance, including the premiums for this disability provision, shall be waived and any premiums tendered for such period shall be refunded to the insured, if living, otherwise, to the beneficiary. Such payment of benefits and waiver of premiums shall be effective as of the date of the beginning of total disability.

(c) The payment of a monthly income by reason of the total disability of the insured in accordance with this provision may be concurrent with or independent of the insured's right to receive total permanent disability benefits under the policy. Neither the payment of a monthly income under this provision nor the payment of total permanent disability benefits under the policy shall reduce the amount of the monthly income payment payable for total disability under this provision, or the amount of the monthly instalment payable for total permanent disability under the policy.

(d) Total disability as referred to herein is any impairment of mind or body which continuously renders it impossible for the disabled person to follow any substantially gainful occupation. The Administrator of Veterans' Affairs shall have the right to require proof of the continuance of such total disability at any time or times during the first two years after receipt of proof of total disability, but not more frequently thereafter than once a year. If the insured shall fail to furnish satisfactory proof thereof, no further premiums will be waived and no further monthly disability payments will be made hereunder on account of such disability.

(e) In the event it is found that the insured is no longer totally disabled, the payment of benefits and the waiver of premiums shall cease and the insured shall be privileged to continue the amount of insurance as provided by the terms of the policy as modified by this regulation upon payment of the monthly premium, and the total disability provision upon payment of the monthly premium specified in this agreement.

(f) The waiver of premiums and the payment of the monthly income, as herein provided shall be in addition to all other benefits and privileges under the policy including the participation in such dividends on the policy as may be determined by the Administrator of Veterans' Affairs.

(g) Any installments due and payable under this provision if not paid during life of insured shall be paid to the beneficiary under the policy.

(h) No benefits shall be payable under this provision for disabilities occurring after surrender of policy or after policy has matured as an endowment or while protection is afforded under extended insurance provision of the policy.

(i) Upon surrender and acceptance of paid-up insurance for less than the face value of such policy, a total disability provision may be included in such paid-up insurance policy, providing for a monthly disability benefit of $5.75 for each $1,000 insurance. Such disability provision will not be included in any paid-up insurance policy of less than $1,000 face value.

(j) This provision may be reinstated after lapse, together with the policy, by compliance with the same terms and conditions provided for reinstatement of the policy of insurance to which this agreement is attached. This includes the payment of all premiums in arrears with interest at 5 per centum per annum, compounded annually.

(k) This agreement takes effect on the ——— of ————————, 19——.

All claims arising under the provisions of section 311 of the World War Veterans' Act, 1924, as amended May 29, 1928, will be settled in accordance with the provisions of this section, as hereby amended.

[13 FR 7099, Nov. 27, 1948]

§ 6.161 Authority for the total disability provision for United States Government life insurance.

The total disability provision for United States Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930, and section 748 of Title 38, United States Code is subject in all respects to the applicable provisions of Title 38, United States Code, or any amendments thereto, and all United States Government life insurance regulations now in force or hereafter adopted, all of which together with the insured's application, evidence of good health, tender of premium, and the total disability provision shall constitute the contract.

[25 FR 2258, Mar. 18, 1960]

§ 6.162 Application for total disability provision authorized by section 748 of Title 38, United States Code.

Applications for the total disability provisions for United States Government life insurance and the evidence of good health shall be on such forms as may be prescribed by the Veterans Administration, but any statement in writing sufficient to identify the applicant and the amount of insurance applied for, together with evidence of good health satisfactory to the Administrator and remittance sufficient to cover the first monthly premium will be sufficient as an application for the total disability provision.

[25 FR 2258, Mar. 18, 1960]

§ 6.162a Application for reinstatement and issue of the total disability provision pursuant to section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.

(a) Any person having a United States Government life insurance policy on a permanent plan with a total disability provision attached who surrendered such insurance prior to January 1, 1957, pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951 at a time when the total disability provision was in force, upon meeting the requirements for reinstatement of such insurance pursuant to the provisions of § 6.86 may at the same time reinstate the lapsed total disability provision without medical examination upon (1) written application signed by any such person, (2) payment of the required reserve, and (3) the full premium on the total disability provision for the month in which application is made.

(b) Any person having a United States Government life insurance policy on a permanent plan with a total disability provision attached who surrendered such insurance prior to January 1, 1957, pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951 at a time when the total disability provision was in force, upon meeting the requirements for issuance of United States Government life insurance pursuant to the provisions of § 6.2(a), may be issued at the same time a total disability provision without medical examination upon written application signed by the applicant and payment of the required premium: *Provided*, That the total disability provision issued pursuant to this paragraph shall not be in excess of the total disability insurance which lapsed at the time the life insurance was surrendered prior to January 1, 1957, pursuant to section 5 of the Servicemen's Indemnity Act.

(c) If a total disability provision was not in force at the time a permanent plan policy of United States Government life insurance was surrendered prior to January 1, 1957, pursuant to section 5 of the Servicemen's Indemnity Act of 1951 or if an insured who surrendered a permanent plan policy of United States Government life insurance prior to January 1, 1957, pursuant to section 5 of the Servicemen's Indemnity Act of 1951 at a time when the total disability provision was in force, fails to meet the requirements of paragraphs (a) or (b) of this section within the time limitations specified for reinstatement or issue of the total disability provision, the total disability provision may, if the life insurance is in force under premium-paying conditions, be reinstated in accordance with the provisions of § 6.164 or the insured may be issued a total disability provision upon compliance with the requirements of § 6.162.

(d) Where no total disability provision was attached to United States Government life insurance surrendered prior to January 1, 1957, under the provision of section 5 of the Servicemen's Indemnity Act of 1951, such provision may be added to United States Government life insurance issued or reinstated under § 6.2(a) or § 6.86 upon compliance with the provisions of § 6.162.

[21 FR 10379, Dec. 28, 1956, as amended at 24 FR 7325, Sept. 11, 1959]

§ 6.162b Payment of total disability benefits on United States Government life insurance issued or reinstated pursuant to section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code.

Payment under the total disability provision attached to permanent plan insurance and issued or reinstated pursuant to section 5 of Public Law 23, 82d Congress, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code, shall not be denied because the total disability of the applicant commenced prior to the date of his application for issuance or reinstatement of such provision. If the insured was totally disabled at the time of issuance or reinstatement of the total disability provision and (a) such disability had existed for less than 4 consecutive months, payment will commence in accordance with the provisions of § 6.164, and (b) if such disability had existed for at least 4 consecutive months, payment will commence on the first monthly anniversary date of total disability on or subsequent to the effective date of the issue or reinstatement of such insurance but in no event more than 6 months prior to receipt of due proof: *Provided,* That on insurance issued or reinstated pursuant to section 623 of the National Service Life Insurance Act, while the applicant is in active service, payment of total disability benefits shall not commence prior to the first monthly anniversary date of total disability on or after January 1, 1957.

[24 FR 7325, Sept. 11, 1959]

§ 6.163 Effective date of the total disability provision authorized by section 748 of Title 38, United States Code.

The total disability provision for United States Government life insurance will be effective:

(a) The first day of the month in which all requirements are complied with, or

(b) The first day of the month following the month in which all requirements are complied with, if so requested by the applicant at the time of applying, or

(c) The same date as the effective date of the Government life insurance policy, if both the policy and the total disability provision are applied for at the same time, or

(d) If the United States Government life insurance policy is dated back, or has already been issued and bears a date other than the first day of a month, the total disability provision will be effective as of the corresponding day in the month in which all requirements are complied with unless the applicant requests that it become effective as of the corresponding day in the following month.

[13 FR 7099, Nov. 27, 1948, as amended at 24 FR 7325, Sept. 11, 1959]

§ 6.164 Total disability provision for U.S. Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930, and section 748 of title 38, United States Code.

The total disability provision for United States Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930, and section 748 of title 38, United States Code, is as follows:

U.S. GOVERNMENT LIFE INSURANCE

[TOTAL DISABILITY PROVISION]

Age of insured..... Monthly.....
Quarterly.....
Attached to Policy No. K. Semiannual.....
Annual.....

Provision for waiver of premiums and payment of monthly income attached to and made a part of U.S. Government life insurance policy No. K—— in amount of $—— issued on the life of ————————, hereafter designated as the insured.

If the insured becomes totally disabled as the result of disease or injury before attaining the age of 65 years and is continuously so disabled for a period of 4 consecutive months or more and before default in payment of any premium and if due proof satisfactory to the Administrator of Veterans Affairs (hereinafter referred to as the Administrator) of such disability and the continuance of such disability is furnished before default in payment of a premium on this provision or within 1 year from the due date

of the premium in default, the United States of America will:

(a) Waive the payment of each premium on the policy and on this provision, beginning with the first monthly premium falling due after the monthly income becomes payable and continuing as long as such monthly income is paid. Any premiums tendered for the period covered by the waiver will be refunded to the insured if living, otherwise to the designated beneficiary.

(b) Pay to the insured a monthly income at the rate of $5.75 for each $1,000 insurance as shown on the face of the policy, on any multiple of $500. Such payments shall be effective as of the first day of the fifth consecutive month of continuous total disability and shall continue to be so payable during such total disability. Any monthly income payments due the insured by reason of total disability and not paid during his lifetime shall be paid to the beneficiary under the policy.

The insured must file written application for total disability benefits and must file due proof of such total disability: *Provided*, That in the event the insured dies without filing application and the Administrator finds that the insured's failure to file such application was due to circumstances beyond the insured's control, the application and due proof may be filed by the beneficiary within 1 year after the death of the insured. Except as hereinafter provided, the monthly income payments may relate back to a date not exceeding 6 months prior to the date of death of the insured.

Total disability as referred to herein is any impairment of mind or body which continuously renders it impossible for the disabled person to follow any substantially gainful occupation. Except as provided above in this regulation, the monthly income payments may relate back to a date not exceeding 6 months prior to receipt of due proof of such total disability but not prior to the first day of the fifth consecutive month of continuous total disability. Without prejudice to any other cause of disability, the loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, or becoming permanently helpless or permanently bedridden, shall be deemed to be total disability, and monthly income payments for any of these specifically enumerated causes of total disability may be paid from the first day of the fifth consecutive month of such continuous total disability. However, such anatomical and functional loss shall not be deemed to be a total disability under a total disability provision originally issued subsequent to December 15, 1936.

Notwithstanding the fact that proof of total disability may have been accepted as satisfactory, proof of the continuance of such total disability may be required at any time or times during the first 2 years after receipt of proof of total disability, but not more frequently thereafter than once a year. If the insured shall fail to furnish satisfactory evidence of the continuance of such total disability, or if it appears that the insured is able to engage in an occupation or perform work for compensation or profit, no further monthly income payments will be made and no further waiver of the payment of premiums will be granted, and thereafter premiums on the policy and on this provision will become due and payable as provided in the policy and in this provision.

The payment of a monthly income by reason of the total disability of the insured in accordance with this provision may be concurrent with or independent of the insured's right to receive total permanent disability benefits under the policy. Neither the payment of a monthly income under this provision nor the payment of total permanent disability benefits under the policy shall reduce the amount of the monthly income payment payable for total disability under this provision or the amount of the monthly installment payable for total permanent disability under the policy.

If the policy shall lapse, or be surrendered for a cash value or for extended insurance, or mature as an endowment, then this provision shall cease and no further premium will be payable. If the policy shall become paid up at the end of the premium-paying period, then this provision may be continued in force by the payment of monthly premiums as herein provided. If the policy be surrendered prior to the expiration of the premium-paying period for paid-up insurance in an amount of not less than $1,000, the insured may continue this provision in multiples of $500 by the payment of the required premiums as they become due. If the amount of paid-up insurance is less than $1,000, this provision shall cease, and no further premium will be payable.

The waiver of premiums and the payment of the monthly income, as herein provided, shall be in addition to all other benefits and privileges under the policy, including the participation in such dividends on the policy as may be determined by the Administrator of Veterans Affairs.

This provision may be canceled by the insured at any time upon written request to the Veterans Administration. This provision shall terminate and be of no further force and effect if any premium on the policy or on this provision be not paid when due or within the grace period or 31 days thereafter. If a premium be not paid as stipulated,

then this provision shall cease and terminate but may be reinstated upon satisfactory evidence of good health, and the payment of the required premiums. The premium requirement to reinstate this provision, if attached to a permanent plan policy of insurance, is the payment of all premiums in arrears with interest at the rate of 5 percent per annum, compounded annually, to the first monthly premium due date after July 31, 1946, and thereafter at the rate of 4 percent per annum, compounded annually: *Provided*, That no interest on premiums in arrears will be required if reinstatement is effected within 6 months from the due date of the premium in default. The premium requirement to reinstate this provision, if attached to a 5-year level premium term policy, is the payment of two monthly premiums, one for the month of lapse, the other for the month of reinstatement. If the application and the required premiums are submitted within 6 months after the due date of the premium in default, reinstatement may be effected upon satisfactory evidence showing the applicant to be in as good health on the date of application and tender of premiums as he was on the last day of the grace period of the premium in default.

This provision is issued under authority of section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930, and section 748 of Title 38, United States Code, and is subject to the applicable provisions of Title 38, United States Code, and amendments and supplements thereto, and to the regulations of the Veterans Administration now in force or hereafter published. The terms and conditions of the policy which are not contrary to or inconsistent with the terms and conditions of this provision are hereby expressly made a part of this provision.

This provision is issued in consideration of the application, evidence of good health, and the payment of a premium of —— dollars and —— cents in addition to the premium on the policy, said premium to be paid on the day and date this provision takes effect and on the same day of each month thereafter or within the grace period of 31 days.

This provision takes effect on the —— day of ————, 19——.

ADMINISTRATOR OF VETERANS AFFAIRS.

Countersigned at Washington, D.C.
Examined and issued ——, 19——.
————(Registrar) D. No. ——.

[33 FR 363, Jan. 10, 1968]

§ 6.165 Disabilities deemed to be total.

Without prejudice to any other cause of disability, the loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the loss of hearing of both ears, or the organic loss of speech, or becoming permanently helpless or permanently bedridden shall be deemed to be total disability for United States Government life insurance authorized by section 311 of the World War Veterans' Act, 1924, as amended July 3, 1930, and monthly income payments for any of these specifically enumerated causes of total disability may be paid from the first day of the fifth consecutive month of such continuous total disability. Organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper through the normal organs of speech if such loss is caused by organic changes in such organs. Where such loss exists, the fact that some speech can be produced through the use of an artificial appliance or other organs of the body will be disregarded. However, such anatomical and functional loss shall not be deemed to be a total disability under a total disability provision originally issued on and subsequent to December 15, 1936.

[24 FR 7325, Sept. 11, 1959]

§ 6.166 Authority for the total permanent disability provision for the special endowment at age 96 plan of United States Government life insurance.

The total permanent disability provision authorized by section 742(c) of Title 38, United States Code, is subject in all respects to the applicable provisions of Title 38, United States Code, or any amendments thereto and all applicable United States Government life insurance regulations now in force or hereafter adopted, all of which together with the insured's application, tender of premiums and the total permanent disability provision shall constitute the contract.

[27 FR 9603, Sept. 28, 1962]

§ 6.167 Application for total permanent disability provision for the special endowment at age 96 plan of United States Government life insurance and the effective date of such provision.

(a) Application for the total permanent disability provision authorized by section 742(c) of Title 38, United States Code, must be made by the insured at the same time as he makes application for exchange of his 5-year level premium term policy for the special endowment at age 96 plan policy. The application for the total permanent disability provision should be on such forms as may be prescribed by the Veterans Administration, but any statement in writing sufficient to identify the applicant and a remittance to cover the first monthly premium will be sufficient as an application for the total permanent disability provision. The total permanent disability provision will be granted for the same amount as the special endowment at age 96 plan policy which is placed in force.

(b) The special endowment at age 96 plan policy and the total permanent disability provision must be applied for at the same time and if all requirements are complied with, the total permanent disability provision shall be effective as of the same date such life insurance becomes effective.

[27 FR 9603, Sept. 28, 1962]

§ 6.168 Total permanent disability provision for United States Government life insurance on the special endowment at age 96 plan policy.

The total permanent disability provision for the special endowment at age 96 plan of United States Government life insurance authorized by section 742(c) of Title 38, United States Code, is as follows:

UNITED STATES GOVERNMENT LIFE INSURANCE

TOTAL PERMANENT DISABILITY PROVISION

Attached to and made a part of Special Endowment at Age 96 Plan. Policy No. ——— on the life of ————————. ——— age of insured.

Premiums:
Monthly ————————————————
Quarterly ————————————————
Semiannual ————————————————
Annual————————————————

If the insured becomes totally permanently disabled after the date of application for this provision or the effective date thereof, whichever is later; and while this provision and the policy are in force by the payment of premiums, the payment of premiums for this provision (as well as for this policy) will be waived as long as the total permanent disability continues, subject to the following clauses (A) to (I):

(A) Total permanent disability is defined as any impairment of mind or body which continuously renders it impossible for the disabled person to follow any substantially gainful occupation and which is founded upon conditions which render it reasonably certain that the total disability will continue throughout the life of the disabled person.

(B) The insured must file written claim for waiver of premiums and must file required proof satisfactory to the Administrator that the provisions stated above have been fulfilled. Waiver of premiums may be denied because of failure to cooperate. Waiver of the payment of premiums for this provision (as well as for this policy) may be granted effective with the first monthly premium due after the start of total permanent disability, except that premiums due more than one year prior to receipt of the insured's claim in the Veterans Administration will be waived only if the Administrator finds that the insured's failure to submit timely claim or satisfactory evidence to show the existence or continuance of total permanent disability was due to circumstances beyond the insured's control.

(C) In the event of the death of the insured without filing claim for waiver, such claim may be filed by the beneficiary with evidence of the insured's right to waiver under this provision within 1 year after the death of the insured. If the beneficiary be insane or a minor, such beneficiary may file claim for waiver with evidence of the insured's right to waiver under this provision within 1 year after removal of such legal disability. If the beneficiary files written claim for waiver of premiums and the other requirements for such waiver under this provision are met, waiver of premiums for this provision (as well as this policy) may be granted effective with the first monthly premium due after the start of total permanent disability, except that premiums due more than 1 year prior to the date of the insured's death will be waived only if it is found that the insured's failure to submit timely claim or satisfactory evidence to show the existence or continuance of total permanent disability was due to circumstances beyond the insured's control.

(D) Premiums paid to cover a period during which waiver is effective shall be refunded in cash, without interest, and, except as provided in § 6.19(b), no part of such amount will be used to pay premiums unless specifically authorized in writing by the insured prior to lapse and then only to pay premiums falling due after such authorization. The premiums refundable under this provision shall be paid to the insured, if living, otherwise to the person entitled to the proceeds of this policy.

(E) Notwithstanding the fact that proof of total permanent disability may have been accepted as satisfactory, proof of continuance of total permanent disability may be required at any time. If the insured fails to provide any evidence required to determine whether total permanent disability has continued or if it is found that an insured is no longer totally permanently disabled, the waiver of premiums shall cease as of the date of such finding. Thereafter, this policy (including this provision) may be continued by the payment of premiums, the due date of the first premium payable being the next regular monthly due date of the premium under the policy and the provision. This policy and provision shall not lapse prior to the date of expiration of the grace period allowed for the payment of such premium or prior to the expiration of 31 days after date of notice to the insured of the termination of the premium waiver, whichever is the later date. Such notice shall be sent by registered mail or by certified mail to the insured at his last address of record and sufficient notice will be deemed to have been given when such letter has been placed in the mail by the Veterans Administration. However, an additional period of not more than 31 days for payment of premiums may be granted in any case in which it is shown that the failure to make payment within 31 days after notice as defined above was due to circumstances beyond the insured's control; but premiums in such case must be paid during the lifetime of the insured. The failure of the insured to furnish a correct current address at which mail will reach him promptly shall not be grounds for a further extension of time for payment of premiums.

(F) This provision will cease to be in effect if this policy matures as an endowment, or if this policy or this provision lapses, or if this policy is surrendered for its cash value, or for extended term insurance, or is surrendered for paid-up life insurance.

(G) If a premium be not paid as stipulated, then this provision shall lapse but may be reinstated upon satisfactory evidence of good health and upon payment of all premiums in arrears with interest at the rate of 4 percent per annum, compounded annually. However, no interest on premiums in arrears will be required if reinstatement is effected within 6 months from the due date of the premium in default. If application and the required premiums are submitted within 6 months after the due date of the premium in default, reinstatement may be effected upon satisfactory evidence showing the applicant to be in as good health on the date of application and tender of premiums as he was on the last day of the grace period of the premium in default.

(H) The waiver of premiums provided for in this provision will be in addition to other benefits and privileges under this policy. This policy may be separately classified for the purpose of dividend distribution from otherwise similar policies not containing such provision.

(I) This provision is granted in consideration of the application and payment of the monthly premium shown above (in addition to the monthly premium stated on the face of the policy), and the payment thereafter of the same amount on each succeeding monthly premium due date of this policy. Except as otherwise provided herein, premiums for the provision are payable until the end of the premium-paying period of this policy. If any premium for this provision is not paid before the end of the 31-day grace period, this provision will lapse as of the due date of that premium. Premiums for this provision may be paid quarterly, semiannually, or annually, in advance, but must be paid in the same manner as the premiums for this policy.

This provision takes effect on this ——— day of ————, 19—.

———————————————————

Administrator of Veterans Affairs.

[27 FR 9604, Sept. 28, 1962, as amended at 30 FR 8047, June 23, 1965; 33 FR 364, Jan. 10, 1968]

Five-Year Level Premium Term Plan

§ 6.170 Renewal of United States Government life insurance on the 5-year level premium term plan.

(a) Effective July 23, 1953, all or any part of United States Government life insurance on the 5-year level premium term plan, in any multiple of $500 and not less than $1,000, which is not lapsed at the expiration of any 5-year level premium term period, shall be automatically renewed without application or medical examination for a successive 5-year period at the 5-year

level premium term rate for the attained age of the insured. The renewal of insurance for any successive 5-year period will become effective as of the day following the expiration of the preceding 5-year period, and the premium for such renewal will be at the 5-year level premium term rate for the attained age of the policyholder on that day: *Provided,* That no insurance is subject to renewal if the policyholder has exercised his optional right to change to another plan of insurance.

(b) Effective June 25, 1970, a 5-year level premium term policy which lapsed for nonpayment of the premium due and subsequently expired may be renewed subsequent to the expiration of the old term period provided the insured within 5 years of the date of lapse:

(1) Submits written application for reinstatement of the insurance.

(2) Tenders 2 monthly premiums, 1 for the month of lapse at the rate for the expired term and the other for the month of reinstatement at the rate for the new term,

(3)(i) If application for reinstatement is submitted and the premiums tendered within 6 premium months after lapse, including the premium month for which the unpaid premium was due, insurance will be reinstated provided the applicant be in as good health on the date of application and tender of premiums as he was on the last day of the grace period of the premium in default and furnishes satisfactory evidence thereof.

(ii) If application for reinstatement is submitted and the premiums tendered after expiration of the 6-month period mentioned in paragraph (b)(3)(i) of this section, insurance will be reinstated provided applicant is in good health (§ 6.155) on the date of application and tender of premiums and furnishes satisfactory evidence thereof.

[23 FR 7585, Sept. 30, 1958, as amended at 28 FR 1542, Feb. 19, 1963; 33 FR 364, Jan. 10, 1968; 36 FR 4383, Mar. 5, 1971]

Premium Waiver on United States Government Life Insurance Under Section 622, National Service Life Insurance Act, as Amended, and Section 724 of Title 38, United States Code

§ 6.185 Premium waiver on United States Government life insurance under section 622 of the National Service Life Insurance Act, as amended, and section 724 of Title 38, United States Code.

(a) Persons in the active service for a continuous period in excess of 30 days, after April 25, 1951, who are insured under a 5-year level premium term United States Government life insurance policy, upon written application made while in the active service prior to January 1, 1957, may be granted waiver of premiums which become due during the remainder of the insured's continuous active service and for 120 days thereafter, provided, the insurance is not lapsed at the time the waiver is to be effective.

(b) Persons in the active service for a continuous period in excess of 30 days, after April 25, 1951, who are insured under a permanent plan of United States Government life insurance, upon written application made while in the active service prior to January 1, 1957, may be granted waiver of that portion of the premium representing the cost of pure insurance risk, as determined by the Administrator, which becomes due during the remainder of such continuous active service and for 120 days thereafter: *Provided,* That the insurance is not lapsed at the time the waiver is to be effective: *And provided further,* That during the period of such waiver the portion of the premium which is not required for the pure insurance risk is paid when due (or within the grace period).

(c) No premiums may be waived under this section which become due on or prior to June 1, 1951, or which become due on or prior to the first day of the second calendar month following the insured's entry into active service, whichever is the later date: *Provided,* That no premiums shall be waived for any period prior to the date of application therefor, except that where the insured is determined, in ac-

cordance with the Missing Persons Act, to have been in a status of missing, missing in action, interned, captured, beleaguered, or beseiged, at any time after April 25, 1951, and before April 26, 1952, (1) all premiums due or paid on term insurance after June 1, 1951, during the period of such status and during the remainder of the period of continuous active service and 120 days thereafter shall be waived, unless the insured requests in writing that the waiver be terminated; and (2) that portion of any permanent insurance premiums, which represents the cost of the pure insurance risk, due or paid after June 1, 1951, during the period of such status and during the remainder of the period of continuous active service and 120 days thereafter, shall be waived, provided the insured files written application therefor within 120 days after the passage of Public Law 193, 84th Congress, approved July 29, 1955, or the date of his return to military jurisdiction, whichever is later: *Provided*, Except where the amount of the dividend earned would exceed the amount of the premium waived, the waiver shall be automatic if the insured dies or is declared dead while in such missing status or if the insured dies on or prior to the last day on which application for the waiver may be made. Except as provided in this paragraph, application for waiver of premiums under section 622 must be made prior to January 1, 1957. Subject to these limitations, premium waiver under this paragraph shall be effective as follows:

(i) As of the premium due date of the policy on or after the date application for waiver is delivered to the Veterans Administration. If forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery.

(ii) As of the premium due date of the policy on or after the date application for waiver is executed and placed in military or naval channels. Unless otherwise shown, the date the application is executed will be taken as the date it was placed in such channels.

(d) Premiums tendered on 5-year level premium term insurance to cover a period during which waiver is effective under this section shall be refunded without interest. If premiums for the full amount are tendered in payment of permanent plan insurance during a period in which waiver is effective under this section, only that portion of such premiums which represents the cost of pure insurance risk, as determined by the Administrator, shall be refunded, and such refund shall be with interest.

(e) United States Government life insurance on the 5-year level premium term plan shall be automatically renewed for an additional 5-year period at the premium rate for the then attained age of the insured, provided the premiums on such insurance are being waived under this section at the expiration of the term period. The renewal of insurance under this paragraph shall be effective as of the day following the expiration of the preceding term period and the premium for such renewed insurance will be at the 5-year level premium term rate for the attained age of the insured on that day. The premiums on the insurance renewed under this paragraph shall continue to be waived while the insured continues in active service and for 120 days after separation therefrom.

(f) The waiver of premiums under this section will terminate at the expiration of the 120-day period following separation from active service, on or after January 1, 1957, even though the insured reenters active service within such 120-day period. However, if the insured reenters active service on the date of separation or the following day, such reentrance shall be deemed to be a continuation of the previous active service and the waiver continued as otherwise provided.

(g) United States Government life insurance on which premium waiver has ceased under this section because of the expiration of the 120-day period following the insured's date of separation from continuous active service, may be continued by the payment of premiums, the due date of the first premium payable being the next regular monthly due date of the premium under the policy following expiration of the 120-day period. The insurance shall lapse if premiums are not paid when due or within the grace

period allowed for the payment of such premiums.

(h) If the insured fails to pay when due (or within the grace period) that portion of the premium which is not required for the pure insurance risk on any permanent plan of United States Government life insurance for which the cost of the pure insurance risk is being waived under this section, the insurance shall lapse and the premium waiver cease. Upon reinstatement of the insurance, a new application for waiver of premiums under this section will not be required if the insured has continued in the active service without interruption and is otherwise entitled to continuance of such waiver.

(i) The insured while in the active service or within 120 days following separation from such service may by request terminate premium waiver under this section: *Provided*, That such request shall not be effective prior to the date it is mailed or otherwise delivered to the Veterans' Administration.

(j) Waiver of premiums under this section shall not include the premiums due and payable on the total disability provision attached to such United States Government life insurance policy.

(k) During any period waiver of premium is effective under this section the insurance shall be nonparticipating.

(l) A 5-year level premium term policy on which premiums have been waived under this section during any portion of the term period shall have no reserve value.

(m) In any case in which insurance matures by death on or after January 1, 1972, while in force under this section, there shall be placed as an indebtedness against such insurance the amount of premiums, less dividends, waived on or after that date which, unless otherwise paid, shall be deducted from the proceeds. In such case, the liability of the Government under 38 U.S.C. 724(b) shall be reduced by the amount so deducted from the proceeds.

[16 FR 12986, Dec. 27, 1951, as amended at 18 FR 6241, Sept. 30, 1953; 20 FR 7216, Sept. 28, 1955; 21 FR 10380, Dec. 28, 1956; 24 FR 7325, Sept. 11, 1959; 37 FR 4194, Feb. 29, 1972]

Surrender Under Section 5, Public Law 23, 82d Congress of Permanent Plan Policies in Force Less Than One Year

§ 6.186 Surrender of permanent plan policies of United States Government life insurance, in force for less than 1 year, under the provisions of section 5, Servicemen's Indemnity Act of 1951.

A permanent plan policy of United States Government life insurance in force for less than 1 year by payment or waiver of premiums shall not have a cash value. Such a policy which was not lapsed could be surrendered by the insured while in active service prior to January 1, 1957, with right of replacement pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act, or section 781 of Title 38, United States Code, upon written request therefor and upon complete surrender of the insurance with all claims thereunder.

[24 FR 7326, Sept. 11, 1959]

Determination of Liability Under Sections 302 and 313, World War Veterans' Act, 1924, Sections 607 and 602 (v)(2), National Service Life Insurance Act, 1940, as Amended, and Sections 721 and 757 of Title 38, United States Code

§ 6.190 Establishment of committees on extra hazards of service.

There are hereby established in the Insurance Service the necessary committees to make determinations on extra hazards of service (secs. 302 and 313, World War Veterans' Act, 1924, secs. 607 and 602(v)(2), National Service Life Insurance Act, 1940, as amended, and secs. 721 and 757 of Title 38, United States Code), which will be in charge of chairmen who shall be responsible for the proper functioning of such committees. Each committee shall be composed of the chairman and such regular members, alternate members, and other personnel as may be found necessary for the purpose of executing the duties and functions assigned thereto.

[28 FR 8317, Aug. 14, 1963]

§ 6.191 Jurisdiction.

The Extra Hazard Committees are vested with exclusive jurisdiction in determining the liability of the United States and the United States Government Life Insurance Fund for waiver of payment of premiums, payment of total, total permanent disability, and death insurance benefits under United States Government life insurance and to determine the liability of the United States and the National Service Life Insurance Fund for waiver of payment of premiums due to total disability, payment of total disability insurance benefits, and death insurance benefits under National Service life insurance.

[27 FR 9604, Sept. 28, 1962]

§ 6.192 Definition of "disease or injury traceable to the extra hazard of the military or naval services".

(a) In cases wherein, pursuant to the provisions of the War Risk Insurance Act and the amendments thereto or of the World War Veterans' Act and the amendments thereto or the United States Government life insurance provisions of Title 38, United States Code, a determination has been made that a disease or injury has been suffered or contracted in the active military or naval service during the period beginning April 6, 1917 and ending July 2, 1921, and notwithstanding such disease or injury the insured has been permitted under the provisions of said War Risk Insurance Act, World War Veterans' Act, or Title 38 of the United States Code to reinstate or to convert insurance into United States Government life insurance, the subsequent death or total permanent disability of the insured, if found to be traceable to the said disease or injury, shall, for the purpose of determining liability under section 302 of the World War Veterans' Act or section 757 of Title 38, United States Code, be held to be the result of disease or injury traceable to the extra hazard of the military or naval service.

(b) In other cases, disease or injury may be found to be traceable to the extra hazard of the military or naval service when it appears from the evidence that the said disease or injury was in fact caused by or is traceable to the performance of duty in the active military, naval, or air service (as that term is defined in section 101 of Title 38, United States Code).

[24 FR 7326, Sept. 11, 1959]

DISABILITY INSURANCE CLAIMS

§ 6.202 Claim for disability benefits under insurance.

A claim for total disability or total permanent disability benefits under a contract of insurance is any writing which alleges total disability or total permanent disability at a time when the contract was in force or which uses words showing an intention to claim total disability or total permanent disability insurance benefits. However, the claimant may be required to furnish a statement in support of his claim on forms provided by the Veterans' Administration, and such additional information concerning his industrial activities and physical and mental condition as may be required by the Veterans' Administration.

[17 FR 9704, Oct. 28, 1952]

§ 6.205 Ratings for insurance benefits not applicable for disability pension or compensation.

Since decisions of the disability insurance claims activity determining the existence or nonexistence of total or total permanent disability for insurance purposes and decisions of rating agencies determining the existence or nonexistence of total or total permanent disability for pension or compensation purposes are based upon distinctly dissimilar standards, it follows that the former cannot be determinative for pension or compensation purposes and the latter cannot be determinative for insurance purposes.

[21 FR 9981, Dec. 14, 1956]

§ 6.206 Reconsideration of insurance claims where suits have terminated in favor of the Government.

Where suit has been brought against the United States under section 19 of the World War Veterans' Act, 1924, as

amended, or section 784 of Title 38, United States Code, for the benefits of yearly renewable term insurance, automatic, or United States Government life insurance because of alleged total permanent disability, or total disability as defined in the total disability provision attached to United States Government life insurance policies, or under section 617 of the National Service Life Insurance Act of 1940, as amended, or section 784 of Title 38, United States Code, and judgment on the merits in favor of the Government has been entered, the claim will be reconsidered only where it is definitely shown that new and material evidence has been produced which was not presented to the court, or that manifest error was made.

[24 FR 7326, Sept. 11, 1959]

§ 6.207 Total or total permanent disability for twenty years or more.

Where the Disability Insurance Claims activity has made a finding of total or total permanent disability for insurance purposes and it is found that such disability remained continuously in effect for 20 or more years, the finding will not be discontinued thereafter, except upon a showing that such a determination was based on fraud. The 20-year period will be computed from the date the continuous total or total permanent disability commenced, as determined by the Disability Insurance Claims activity.

[27 FR 11893, Dec. 1, 1962]

Appeals

§ 6.210 Appeal to Board of Veterans Appeals.

(a) The provisions of Part 19 of this chapter will be followed in connection with appeals to the Board of Veterans Appeals involving questions pertaining to the denial of applications for insurance total disability income provision, or reinstatement; disallowance of claims for insurance benefits; and decisions holding fraud or imposing forfeiture. Notice to the applicant or claimant and his representative, if any, of the right to appeal will be sent by the insurance activity having jurisdiction over the case, at time action of denial, disallowance, or forfeiture is taken.

(b) When an appeal to the Board of Veterans Appeals is initiated by a notice of disagreement, any unpaid premiums, normally due under the policy from effective date of issue or reinstatement (as appropriate), will become an interest-bearing lien, enforceable as a legal debt due the United States and subject to all available collection procedures in the event of favorable action by the Board.

(c) Where the adverse action from which appeal is taken involves a change in or addition to insurance currently in force, premium payments must be continued on the existing contract.

[33 FR 3176, Feb. 20, 1968]

PART 7—SOLDIERS' AND SAILORS' CIVIL RELIEF

Soldiers' and Sailors' Civil Relief Act of 1940

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Soldiers' and Sailors' Civil Relief Act Amendments of 1942

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AUTHORITY: Sec. 407, 54 Stat. 1185, as amended; 50 U.S.C. App. 547.

SOURCE: 13 FR 7103, Nov. 27, 1948, unless otherwise noted.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

§ 7.2 Form of certificate.

Veterans' Administration Insurance Form 388

THE UNITED STATES OF AMERICA

Certificate Issued Under Authority of Article IV, Section 407, of the Soldiers' and Sailors' Civil Relief Act of 1940

Issued to ————————————, the insurer, in the amount ————————, dollars, bearing interest at the rate of three per centum per annum from the effective date of this Certificate.

This Certificate representing premiums on policies entered on the monthly difference report for the month of issue, shall be redeemable by the United States of America subject to the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (Public No. 861, 76th Congress, 3d Session).

This Certificate shall not be transferred except with the approval of the Administrator of Veterans' Affairs, and shall remain with the insurer until settlement is made in accordance with the Act.

Issued in the City of Washington, District of Columbia, effective as of the —— day of ————————, 194—.

————————————————————

Administrator of Veterans' Affairs.

Recorded under number ——— on this ————————, 194—.

————————————————————

Registrar.

§ 7.3 The insured.

The term "insured" includes any person on active duty with the military and naval forces of the United States (including Coast Guard service) who is the insured under, and the owner of, a policy as hereinafter defined. The term "holder" shall mean the insured under a policy who has an interest in the policy.

(a) The phrase, "persons in military service" as used in section 401 and amplified by the definition of the term "persons in military service," and the term "period of military service", in section 101, (1) and (2), Article I, shall include any person certified by the War Department, the Navy Department or the Coast Guard Service as being on active duty with the land and naval forces of the United States. A statement over the signature of the commanding officer or a commissioned officer of equal or higher rank than the insured, on the application by the insured, may be accepted as a certification. If the insured is on detached service, the application may be witnessed by the person who has custody of the insured's service record. (See § 7.8(a).)

§ 7.4 The policy.

The term "policy" includes any contract of life insurance on the level premium or legal reserve plan, and any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association, on which a premium was paid before date of approval of the act or not less than thirty days before entry on active duty, and is not void or voidable by reason of military service (including any limitation or restriction upon the insured's engaging in or pursuing certain types of activities which a person might be required to engage in by virtue of his being in the military service). Policies of United States Government life insurance and National Service life insurance are not included within the provisions of the act.

(a) The provisions of the act shall not apply to a policy which would be void or voidable on account of the military or naval service of the insured; nor to a policy under which the death benefit would not be payable or the amount of the death benefit would be reduced in event of death while in the military or naval service. Any provision in a policy that may limit or eliminate a benefit other than the death benefit, shall not, because of such provision, place the policy outside the protection of the act if the death benefit under the policy is not altered in any way by the fact that the insured is in the military or naval service. A policy that requires the payment of an additional amount as premium by reason of the fact that the insured is in the military or naval serv-

ice, such premium to be paid only by those in such service, will not be entitled to the protection afforded by the act.

(b) A policy may not be brought under the protection of the act if it is subject to a loan or other indebtedness equal to or greater than fifty per centum of the cash surrender value.

(c) The provisions of the act are not applicable to insurance in excess of five thousand dollars on the life of one insured, and a policy (or policies) for a face value exceeding that amount will be divided at the request of the Veterans Administration; however, this shall not delay insurance of the face value of $5,000 from receiving the protection afforded policies under the act, because of administrative procedure or any difficulties encountered in procuring possession of an outstanding policy. If applications are made by an insured on policies exceeding a face value of $5,000 (one or more policies with one or more insurers), without indicating a preference, the Veterans Administration will reject the policy (or policies) having the lesser cash surrender value, and may direct an insurer to divide the insurance into two policies.

(d) An annuity contract, if it provides payment of a substantial death benefit in the nature of life insurance, may be included within the provisions of the act if otherwise eligible. Group insurance carried through or by the means of an association, will not be included unless an individual and separate contract of insurance is completely released to the insured and thereafter comes within the provisions of the act as a policy.

(e) The term "face value" will mean the amount of insurance payable only as a death benefit as stated on the face of the policy, or if not so stated it will mean the commuted value of the installments payable as a death benefit, calculated in accordance with the terms of the policy, on the hypothesis of the death of insured as of the date of application for protection under this act: *Provided,* That any indebtedness, or any extra benefits (such as double indemnity, paid-up additions, etc.,) that may be added to or taken from the amount payable as the death benefit, will not be used in calculating the face value of a policy.

§ 7.5 The premium.

The term "premium" includes the amount specified in the policy to be paid by the insured at regular intervals, and membership dues or assessments in an association.

(a) The premium on a policy will be calculated on an annual basis, and if the annual premium is not stated on the policy, the insurer will make a calculation of the premiums for payment in advance and discounted at not less than 3½ per centum, subject to approval by the Veterans' Administration.

(b) The automatic loan provision or other such benefit in a policy shall not operate to avoid the provisions of the act in relation to any premium that became payable not more than 31 days prior to date of application, and thereafter while policy is protected by the provisions of the act.

(c) The phrase "contracts of insurance in force under their terms" as used in section 402 will mean a policy in force under premium paying conditions at time of application by the insured, or on which a premium is not more than 31 days in arrears: *Provided,* A policy on which premiums are due and unpaid for a period of not more than one year, at the time of application, if reinstated by the insurer and placed in force under premium paying conditions, may be brought within the provisions of the act if otherwise eligible.

§ 7.6 The insurer.

The term "insurer" includes any corporation, partnership, or other form of association which secures or provides insurance under a policy, and is required by law to maintain a reserve, or has made provision for collecting from all persons insured a premium to cover the special war risk of those in the military service.

(a) The provisions of section 414 will apply only to insurance companies or associations which are authorized by the laws of the United States or any State thereof, to grant and issue a policy and are subject to the jurisdic-

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tion of the Courts of the several States and the United States.

§ 7.7 Calculation of values.

(a) The term "cash surrender value" as used in section 402 shall be that amount which the insured would have been entitled to receive, on a policy free of indebtedness, upon complete surrender of all rights under the policy as of the date of application for benefits of the act.

(b) The term "cash surrender value" as used in section 410 and section 411 will include dividend accumulations, the value of any paid-up additions, and other amounts that would have been available to the insured upon complete surrender of all rights under the policy.

(c) The term "indebtedness" will include any loan, lien, or other obligation under the policy due by the insured that would be deducted by the insurer at the time of making settlement under the policy as a death claim.

(d) The use of the terms "interest" and "rate of interest" will follow the usual practice and procedure of the insurer but the rate of interest shall not exceed the rate fixed for policy loans. If no rate of interest on indebtedness is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the act was issued. Any rate of interest not specifically fixed in the policy will be subject to approval by the Veterans' Administration.

§ 7.8 Application.

The provisions of the act will be available only upon application as to each policy made by the insured on a form prescribed by the Veterans' Administration. The form will set forth that the application therein made is a consent by the insured to such modifications of the terms of the contract of insurance as are made necessary by the provisions of the act, and the insurer by receiving and filing the application, shall be deemed to have assented thereto to the extent to which the policy is within the provisions of the act.

(a) The form of application for benefits as prescribed by regulations will be identified as Veterans' Administration Insurance Form 380. A separate form of application will be made by the insured for each policy to be brought under the provisions of the act. An informal application will be supplemented by an application on the prescribed form. The original of the application for benefits will be mailed or delivered by the insured to the insurer at its principal office or to the office or agency to which the last premiums on the policy have been paid. The copy of the application for benefits will be mailed or delivered by the insured to the Veterans' Administration Insurance Service, Washington, D.C. 20420.

(b) When an application for benefits is received by an insurer, a report thereof will be made within 30 days to the Veterans' Administration, Insurance Service, Washington, D.C., on the form prescribed by regulations for that purpose and identified as Veterans' Administration Insurance Form 381. The insurer may submit with the report a statement setting forth any additional information deemed necessary to the adjudication of the application, and any facts and reasoning as to why the policy should or should not be protected under the act.

(c) Upon receipt of a report from the insurer on Form 381, the director of insurance will determine if the policy is entitled to the protection of the act, and the insurer and the insured will be notified of the decision.

§ 7.9 Benefits.

Any policy which has been brought within the provisions of the act shall not lapse or be forfeited for the nonpayment of a premium during the period of military service of the insured or one year after the expiration thereof, but this guarantee shall not extend for more than one year after the date when this act ceases to be in force.

(a) For the period during which a policy is protected by the provisions of the act, any dividends, return of premiums, or other such monetary benefits arising out of the contract or by reason thereof, will be held subject to

disposal or to be applied as may be approved by the Veterans' Administration.

(b) A policy shall not be removed from the protection of the act by reason of a payment made to the insurer by or on behalf of the insured, but any tender of a premium (in whole or in part) shall be applied on the indebtedness established under authority of the act against the policy, and entered as a credit in the monthly difference report.

§ 7.10 Indemnity.

The United States shall have a first lien upon any policy receiving the benefits of the act, subject only to any prior lien and no loan or settlement or payment of dividend may be made by the insurer which will prejudice the security of the Government's lien. Before any dividend is paid or any loan or settlement of any kind or character is made on a policy while protected by the provisions of the act, the written consent of the Veterans' Administration must be obtained.

§ 7.11 Monthly difference report by insurer.

The form of the monthly difference report will be identified as Veterans' Administration Insurance Form 382, and will be rendered within 15 days after the end of each calendar month. This form will be completed in accordance with instructions contained therein.

§ 7.12 Certificate.

Upon audit and approval of a monthly difference report (Form 382), the Administrator of Veterans' Affairs will issue to and in the name of the insurer, a certificate of indebtedness for an amount sufficient to cover the Government's obligation as shown by said report. Said certificate will be issued effective as of the first day of the month following the month covered by the report and will bear interest at the rate of three per centum per annum.

§ 7.13 Maturity.

In the event a policy protected by the provisions of the act is terminated by death of the insured, the amount of any unpaid premiums, with interest at the rate provided for policy loans, shall be deducted from the proceeds of the policy, and shall be included in the next monthly difference report of the insurer as premiums paid.

(a) The phrase "shall be terminated by death" will not include a termination or maturity of a policy as a disability claim, and the policy will continue under the provisions of the act as if there had been no maturity, but the Government shall not be liable for any premiums that the insured would have been relieved of paying under any provisions for payment of premiums in the policy.

(b) If a policy matures as a death claim, or protection under the act is otherwise terminated before expiration of the period fixed by the act, the insurer will immediately notify the Veterans' Administration and will make a complete statement of the account on that particular policy. After audit and approval of the account by the director of insurance, the amount of indebtedness collected by the insurer will be entered as a credit in the monthly difference report. If a policy is not removed from the protection of the act prior to expiration of the period fixed by the act, at that time the insurer shall submit to the Veterans' Administration a statement of account in detail on that particular policy, showing the Government's obligation and the credits, if any, then available. If there is a balance due by the Government to the insurer, a settlement in favor of the insurer will be certified. However, before such settlement is made with an insurer covering the policies on a monthly difference report, or if all policies on a report are released from operations of this act, then the director of insurance shall demand return of the certificate issued to cover the amount of said report.

§ 7.14 Settlement.

If within 1 year after the termination of his period of military service the insured does not pay to the insurer all past due premiums with interest at the rate provided for policy loans, the policy shall immediately lapse and

become void, and the insurer shall thereupon become liable to the Government for the cash surrender value of the policy: *Provided*, That if the insured is in the military service when the act ceases to be in force, such lapse shall occur and surrender value be payable at the expiration of one year after the date when the act ceases to be in force.

§ 7.15 Beneficiary or assignee.

In administering the provisions of Article IV of the act, all matters pertaining thereto shall be confined to the interest of the insured, the insurer, and the Government; therefore, it will not be necessary to procure the consent of a beneficiary, or an assignee, or any person, who may have a right or interest, either vested or inchoate, in the proceeds of the policy, as a prerequisite to bringing a policy within the provisions of the article.

§ 7.16 Termination.

Section 604 provides that the act shall remain in force until May 15, 1945: *Provided*, That should the United States be then engaged in a war, the act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter.

Soldiers' and Sailors' Civil Relief Act Amendments of 1942

§ 7.20 The insured.

The term "insured" includes any person on active duty with the military, air and naval forces of the United States (including Coast Guard), whose life is insured under and who is the owner and holder of and has an interest in a policy as defined in § 7.21.

(a) The phrase "person in military service" as used in section 400(c) includes any member of the Army of the United States, the United States Air Force, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army, Air Force or the Navy and the term "military service" as hereinafter used shall mean service in the Army of the United States, the United States Air Force, the United States Navy, the Marine Corps, and the Coast Guard. A statement over the signature of the Commanding Officer or a commissioned officer of equal or higher rank than the insured, on the application by the insured, may be accepted as a certification that the insured is a person in the military service. If the insured is on detached service, the application may be witnessed by the person who has custody of the insured's service record. If application is made by a person designated by the insured, or is made by the beneficiary, evidence that the insured is a person in the military service will be procured by the Veterans Administration from the service department.

[26 FR 11802, Dec. 8, 1961]

§ 7.21 The policy.

The term "policy" includes any contract of life insurance on a life or endowment or term plan, and any benefit contract in the nature of life insurance arising out of membership in any fraternal or beneficial association, which was made and on which a premium was paid before date of approval of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (October 6, 1942), or not less than 30 days before the date the insured entered into the military service. On applications for benefits of article IV of the Soldiers' and Sailors' Civil Relief Act which are made after July 11, 1956, the contract of insurance must be made and a premium paid thereon not less than 180 days before the date the insured entered into the military service. A policy is not eligible for protection under the act if it contains any provision excluding or restricting liability for death arising from or in connection with military service, or any activity which the insured may be called upon to perform in connection with his military service, or requires the payment of an additional premium because of military service. The provisions of the act are not applicable to policies of United States Government Life Insurance and National Service Life Insurance.

(a) Any provision in a policy that may limit or eliminate a benefit other than the primary death benefit will not, because of such provision, place the policy outside the protection of the act if it is otherwise eligible for protection.

(b) A policy must be in force on a premium paying basis at the time of application for benefits under the act.

(c) An annuity contract, if it provides payment of a substantial death benefit in the nature of life insurance, may be included within the provisions of the act if otherwise eligible. Group insurance will not be included unless an individual and separate contract of insurance is completely released to the insured and thereafter comes within the provisions of the act as a policy.

(d) The phrase "Face amount of insurance" as used in the regulations in this part will mean the amount of insurance payable as a death benefit and if a policy provides for instalment payments as a death benefit they will be calculated in accordance with the terms of the policy on the hypothesis of the death of the insured on the due date of the first premium to be guaranteed by the Government: *Provided*, That any indebtedness, or any accruals (such as paid-up additions, dividend accumulations, etc.) that may be added to or taken from the amount payable as the death benefits will not be used in calculating the face amount of a policy.

[13 FR 7103, Nov. 27, 1948, as amended at 21 FR 7297, Sept. 25, 1956]

§ 7.22 The premium.

The term "premium" includes the amount specified in the policy as the stipend to be paid by the insured at regular intervals during the period therein stated, and membership dues and assessments in an association.

(a) The premium on a policy will be calculated on an annual basis, and if the annual premium is not stated on the policy, the insurer will make a calculation of the premiums for payment in advance and discounted at not less than 3½ percentum, subject to approval by the Veterans' Administration.

(b) Premiums will not be guaranteed for any additional death benefit insurance which together with the amount of the primary death benefit would result in a payment in excess of $10,000 in the event of death of the insured, nor will premiums be guaranteed for benefits additional to the primary death benefit if liability for such additional benefits is excluded or restricted by military service or any activity which the insured may be called upon to perform in connection with his military service: *Provided*, That in the event the premiums for primary and additional benefits are not separable under the terms of the policy the entire premium will be guaranteed if the policy is otherwise eligible for protection under the law.

(c) An automatic loan provision or other such benefit in a policy shall not be operative during the period of protection under the act to avoid the provisions of the act in relation to any premium that became payable not more than thirty-one days prior to date of application, and thereafter while the policy is protected by the provisions of the act.

§ 7.23 The insurer.

The term "insurer" includes any firm, corporation, partnership, or association chartered or authorized to engage in the insurance business and to issue a policy by the laws of a State of the United States or the United States and is subject to the jurisdiction of the courts of the several States or the United States.

§ 7.24 Amount of insurance.

The provisions of the act are not applicable to insurance in excess of ten thousand dollars on the life of one insured, and a policy (or policies) which provide insurance in excess of that amount will be divided at the request of the Veterans' Administration; however, this shall not delay insurance in the amount of ten thousand dollars from receiving the protection afforded policies under the act because of administrative procedures or any difficulties encountered in procuring possessions of an outstanding policy. If applications are made by an insured on policies for an amount exceeding ten thousand dollars (one or more policies with one or more insurers),

without indicating a preference, the policy which affords the best security to the Government will be given preference by the Veterans' Administration.

§ 7.25 Calculation of values.

(a) The term "cash surrender value" shall include any dividend accumulations, the value of any paid-up additions, and any other amounts available as a credit under the policy less the indebtedness with interest accumulations to the day on which the policy ceases to be under the protection of the act.

(b) The term "indebtedness" will include any loan, lien, or other obligation under the policy due by the insured that would be deducted by the insurer at the time of making settlement under the policy.

(c) The use of the terms "interest" and "rate of interest" will follow the usual practice and procedure of the insurer but the rate of interest shall not exceed the rate fixed for policy loans. If no rate of interest on indebtedness is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the act was issued. Any rate of interest not specifically fixed in the policy will be subject to approval by the Veterans' Administration.

§ 7.26 Application.

(a) The benefits of the act are not available except upon application by the insured or by a person designated by the insured or by the beneficiary if the insured is outside the continental United States (not including Alaska and the Panama Canal Zone). Any writing signed by the insured designating a person, firm, or corporation to make application for benefits under the act shall be sufficient authority for the making of such application for the insured by such agent. When application is made by person designated by the insured, the instrument or other writing authorizing such action must be attached to the application executed by the agent. The form will set forth that the application therein made is a consent by the insured to such modifications of the terms of the contract of insurance as are made necessary by the provisions of the act. The insured and the insurer will execute such other forms as may be advisable and will furnish such reports concerning the policy as may be deemed necessary. The insurer will be deemed to have agreed to such modifications of the policy as may be required to give the act full force and effect with respect to such policy.

(b) The form of application for benefits is prescribed as VA Form 9-380 (as revised). An informal application will be supplemented by an application on the prescribed form. The original of the application for benefits will be mailed or delivered to the insurer at its principal office or to the office or agency to which the last premium on the policy has been paid. The copy of the application for benefits will be mailed or delivered to the Veterans Administration at Washington, D.C., 20420.

(c) When an application for benefits is received by an insurer, a report thereof will be made within 30 days to the Veterans Administration at Washington D.C., on the form prescribed for that purpose, VA Form 9-381 (as revised). The insurer may submit with the report a statement setting forth any additional information deemed necessary to the adjudication of the application, and any facts and reasoning as to why the policy should or should not be protected under the act.

(d) Upon receipt of a report from the insurer on VA Form 9-381, the Chief Actuary, will determine if the policy is entitled to the protection of the act, and the insurer and the insured will be notified of the decision.

[13 FR 7103, Nov. 27, 1948, as amended at 26 FR 11802, Dec. 8, 1961; 27 FR 656, Jan. 23, 1962]

§ 7.27 Benefits.

Any policy found to be entitled to protection under the provisions of the act will not lapse or otherwise terminate or be forfeited for the nonpayment of a premium or the nonpayment of any indebtedness or interest during the period of military service of the insured and two years after the expiration of such service, but this guar-

antee will not extend for more than two years after the date when the act ceases to be in force. If the insured reenters military service during the two-year period following separation from such service and the policy is under the protection of the act on the date of reentry, such reentrance shall be deemed to be a continuation of the previous military service. In such case, in the absence of written instruction from the insured to the contrary, the protection under the act will continue during the period of military service of the insured and two years after the expiration of such service, but the guarantee will not extend for more than two years after the date when the act ceases to be in force.

(a) For the period during which a policy is protected by the provisions of the act, any dividends, return of premiums, or other such monetary benefits arising out of the contract or by reason thereof, will be held subject to disposal or to be applied as may be approved by the Veterans' Administration.

(b) A policy will not be removed from the protection of the act by reason of a payment made to the insurer by or on behalf of the insured, but any tender of a premium (in whole or in part) shall be applied on the indebtedness established under authority of the act against the policy: *Provided*, That nothing herein shall prevent an insured from continuing payment to the insurer of premiums to cover any additional benefits (such as double indemnity, waiver of premium, etc.) where such premiums may not be included in the amount guaranteed by the Government.

[13 FR 7103, Nov. 27, 1948, as amended at 27 FR 2287, Mar. 9, 1962]

§ 7.28 Indemnity.

The United States shall have a lien upon any policy receiving the benefits of the act, subject only to any prior lien and no loan or settlement or payment of dividend may be made by the insurer which will prejudice the security of the Government's lien. Before any dividend is paid or any loan or settlement of any kind or character is made with the insured on a policy while protected by the provisions of the act, the written consent of the Veterans' Administration must be obtained.

§ 7.29 Maturity.

(a) If a policy protected by the provisions of the act is terminated by death of the insured, the amount of any unpaid premiums, with interest at the rate provided for policy loans, will be deducted from the proceeds of the policy, and will be reported by the insurer to the Veterans' Administration.

(b) The phrase "maturity of a policy as a death claim or otherwise" (section 405, Soldiers' and Sailors' Civil Relief Act Amendments of 1942), will not include a termination or maturity of a policy as a disability claim, and the policy will continue under the provisions of the act as if there had been no maturity, but the Government shall not be liable for any premiums that the insured would have been relieved of paying under any provisions for payment of premiums in the policy.

(c) If a policy matures as a claim, except a death claim, or if protection under the act is otherwise terminated before expiration of the period fixed by the act, the amount of any unpaid premiums, with interest at the rate provided for policy loans, will be deducted and the insurer will immediately notify the Veterans' Administration and will make a complete statement of the account as to that particular policy.

(d) If a policy is not removed from the protection of the act prior to the expiration of the period of protection, at that time the insurer will submit to the Veterans' Administration a complete statement of the account as to that particular policy.

(e) The statement of account will show the amount of indebtedness by reason of the premiums with interest and the credits, if any, then available and will be subject to audit and approval by the Chief Actuary. The statement of account will include the rate of interest charged on all indebtedness, the dates of debit and credit entries, and such other information as may be deemed necessary in making an audit of the account. If there is a balance due by the United States to

the insurer, payment in favor of the insurer will be certified.

[13 FR 7103, Nov. 27, 1948, as amended at 27 FR 656, Jan. 23, 1962]

§ 7.30 Settlement.

The payment of premiums and interest thereon at the rate fixed in the policy for policy loans while the policy is protected under the provisions of the act is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of protection the amount then due will be treated by the insurer as a loan on the policy. However, if at the expiration of the period of protection the cash surrender value of the policy is less than the amount guaranteed, the policy shall cease and terminate and the United States will pay to the insurer the difference between the cash surrender value of the policy and the amount guaranteed. If the insured is in the military service when the act ceases to be in force, the period of protection of a policy under the act will expire two years after the date when the act ceases to be in force and settlement will be made as above provided. Any amount paid by the United States to an insurer on account of a policy protected under the provisions of the act will become a debt due the United States by the insured on whose account payment was made and such amount will be collected by deduction from any amount due said insured by the United States or as otherwise authorized by law.

§ 7.31 Policy under protection of act.

A policy placed under the protection of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 and which was under the protection thereof on October 6, 1942, by reason of a finding having been made prior to that date, will remain subject to the provisions of said act and the regulations published under authority thereof except that the policy will be subject to the benefits and privileges governing the period of protection and settlement as provided in sections 403, 404, and 405 of Article IV of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. If a policy was protected under the provisions of said act of 1940 and the period of protection terminated prior to October 6, 1942, the provisions of Article IV of the amendments of 1942 and the regulations published under the authority thereof are not applicable to the policy except that any premium which the Government has guaranteed under such policy will be for settlement in accordance with the mode of settlement elected by the insurer as provided in section 408 of the amendments of 1942.

§ 7.32 Election by insurer.

Any insurer holding certificates issued under authority of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 on account of policies protected under said Article, may surrender such certificates to the United States on or before January 4, 1943, and elect to receive the guarantee of premiums and the mode of settlement for such policies as provided by Article IV of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942. The insurer desiring to take such action shall state that, pursuant to the provisions of section 408 of Article IV of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, it elects to receive the guarantee of unpaid premiums and interest thereon and the mode of settlement as provided by said amendments, in lieu of the method of settlements and the requirement for accounts and reports prescribed by Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, and that it therefore surrenders to the United States all certificates of indebtedness issued to it by the Administrator of Veterans' Affairs under said act, giving the numbers of certificates surrendered and attaching same to the release signed by the insurer. The insurer will also submit to the Veterans' Administration at the earliest practicable date a schedule of all policies which were covered under Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, giving name of insured, face amount of policy, policy

number and date of application for protection under said act. In the case of policies as to which the period of protection expired prior to October 6, 1942, if the insurer has elected to accept the provisions of section 408 (2) of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 within the time specified therein, the insurer will submit the statement of account provided by § 7.29 (d) and (e) and in case there is a balance due by the United States to the insurer, payment in favor of the insurer will be certified. If the insurer does not elect to accept the provisions of section 408 (2) of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, on or before January 4, 1943, then the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 and the regulations in this chapter, will govern the accounting as between the insurer and the Government.

§ 7.33 Beneficiary or assignee.

In administering the provisions of Article IV of the act, all matters pertaining thereto shall be confined to the interest of the insured, the insurer, and the Government; therefore it will not be necessary to procure the consent of a beneficiary, or an assignee, or any person, who may have a right or interest, either vested or inchoate, in the proceeds of the policy, as a prerequisite to placing a policy under the protection of the act. Any existing right of an insured to change a beneficiary designation or select an optional settlement for a beneficiary while the policy is under the protection of the act is not affected by the provisions of the act.

§ 7.34 Termination.

Article IV of the Soldiers' and Sailors' Relief Act shall remain in effect until such time as that act is repealed or otherwise terminated by subsequent act of the Congress.

[21 FR 9981, Dec. 14, 1956]

PART 8—NATIONAL SERVICE LIFE INSURANCE

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8.94 Conditional designation of beneficiary.

TOTAL DISABILITY INCOME PROVISIONS

8.95 Authority for the total disability income provision for National Service Life Insurance.
8.95a Withdrawal of the right to issue the total disability income provision (§ 8.98) authorized by section 602(v) of the National Service Life Insurance Act of 1940, as amended August 1, 1946.
8.95b Withdrawal of the right to issue the total disability income provision (§ 8.99) authorized by Public Law 85-678 and section 715 of Title 38, United States Code, in effect before January 1, 1965.
8.96 Application for total disability income provision and application for reinstatement thereof.
8.96a Application for reinstatement and issue of the total disability income provision pursuant to section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.
8.96b Payment of total disability benefits on National Service Life Insurance issued or reinstated pursuant to section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code.
8.97 Effective date of the total disability income provision authorized by section 715 of Title 38, United States Code, as amended by Public Law 88-355.

Sec.
8.98 Total disability income provision for National Service Life Insurance, authorized by the National Service Life Insurance Act of 1940, as amended August 1, 1946.
8.99 Total disability income provision for National Service Life Insurance authorized by Public Law 85-678 and section 715 of Title 38, United States Code, and issued prior to January 1, 1965.
8.99a Total disability income provision for National Service Life Insurance authorized by section 715 of Title 38, United States Code, as amended by Public Law 88-355, effective January 1, 1965, other than insurance issued under 38 U.S.C. 725.
8.99b Total disability income provision authorized by section 715 of Title 38, United States Code, for National Service Life Insurance issued under section 725 of the code.
8.99c Premium rates for the total disability income provision authorized by section 715 of Title 38, United States Code, as amended by Public Law 88-355.

INSURANCE PROVIDED BY SPECIAL LEGISLATION

8.100 Insurance benefits authorized under section 602 (c)(3) of the act, as amended August 1, 1946.

NATIONAL SERVICE LIFE INSURANCE APPROPRIATIONS

8.102 Crediting of premiums to and payment of benefits from the National Service Life Insurance appropriation.

NATIONAL SERVICE LIFE INSURANCE NONPARTICIPATING FUNDS

8.103 Crediting of premiums to and payment of benefits from the Service-Disabled Veterans' Insurance Fund, the Veterans' Special Term Insurance Fund and the Veterans Reopened Insurance Fund.

NATIONAL SERVICE LIFE INSURANCE POLICY FORMS

8.108 Forms of policies.

NATIONAL SERVICE LIFE INSURANCE ISSUED ON OR AFTER APRIL 25, 1951

8.110 National Service life insurance issued pursuant to section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code.
8.111 National Service life insurance issued under section 620 of the National Service Life Insurance Act, as amended, and section 722(a) of Title 38, United States Code.
8.112 National Service life insurance issued under section 621 of the National Service Life Insurance Act, as amended, and section 723(b) of Title 38, United States Code.
8.112a National Service Life Insurance issued under section 725 of Title 38, United States Code.
8.112b National Service Life Insurance issued on the modified life plan and on the ordinary life plan under section 704 (b), (c), and (d) of Title 38, United States Code.

PREMIUM WAIVER UNDER SECTION 622 OF THE NATIONAL SERVICE LIFE INSURANCE ACT, AS AMENDED, AND SECTION 724 OF TITLE 38, UNITED STATES CODE

8.113 Premium waiver under section 622 of the National Service Life Insurance Act, as amended, and section 724 of Title 38, United States Code.

SURRENDER UNDER SECTION 5 OF PUBLIC LAW 23, 82D CONGRESS, OF PERMANENT PLAN POLICIES IN FORCE LESS THAN ONE YEAR

8.114 Surrender of permanent plan policies of National Service Life insurance, in force for less than 1 year, under the provisions of section 5, Servicemen's Indemnity Act of 1951.

NATIONAL SERVICE LIFE INSURANCE GRANTED UNDER SECTION 722(b) OF TITLE 38, UNITED STATES CODE

8.116 National Service life insurance granted under section 722(b) of Title 38, United States Code.

APPEALS

8.117 Appeals to Board of Veterans Appeals.

TOTAL DISABILITY FOR TWENTY YEARS OR MORE

8.118 Total disability for twenty years or more.

PROVISIONAL REGULATIONS

8.185 Title 38, United States Code, section 723, as amended by Public Law 87-223, effective September 13, 1961, provides for payment of a special dividend on insurance heretofore issued under section 621 of the National Service Life Insurance Act of 1940 which has been converted or exchanged for new insurance under section 723(b), and in certain death cases.
8.186 National Service Life Insurance premium refunds—Philippine veterans.

AUTHORITY: 72 Stat. 1114, 1148, 1164, as amended; 38 U.S.C. 210, 701-724, 781-788, unless otherwise noted.

APPLICATIONS

§ 8.0 Eligibility.

(a) *Applications for insurance under section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.* (1) Any person who, while in the active service on or after April 25, 1951, and prior to January 1, 1957, surrendered a permanent plan of National Service life insurance, which was not lapsed, for its cash value under the provisions of § 8.27 (a) or (b) or under § 8.114 if the policy had no cash value, shall be granted a new policy of National Service life insurance in accordance with § 8.110(a) provided a written application signed by the applicant and payment of the required premium are made on or after January 1, 1959, within the period set forth in paragraph (a)(3) of this section and the other conditions of that subpart are met. Such insurance shall be granted without medical examination. If the applicant is mentally incompetent, the application for insurance under this subparagraph may be made only by the guardian (committee or conservator) and, if required under the State law, after the court shall have authorized the fiduciary to make such application.

(2) Any person having National Service life insurance on the 5-year level premium term plan, the term of which expired while such person was in the active service after April 25, 1951, or within 120 days after separation from such active service, and in either case prior to January 1, 1957, shall be granted National Service life insurance on the 5-year level premium term plan in accordance with § 8.110(b): *Provided,* a written application signed by the applicant, payment of the required premium and evidence of good health satisfactory to the Administrator are submitted on or after January 1, 1959, within the period set forth in paragraph (a)(3) of this section and the other conditions of that subparagraph are met.

(3) Any person whose permanent plan insurance was surrendered or whose term insurance expired under the conditions provided in this paragraph, and who had continuous indemnity protection from the surrender or expiry date to January 1, 1957, continuous active service from January 1, 1957, to January 1, 1959, and continuous active duty thereafter, may make application for insurance under this paragraph while on continuous active duty or within 120 days after separation from such service or duty. A person who reenters active service or duty on the date of separation or the following day shall be deemed to be in continuous active service or on continuous active duty.

(4) An application for insurance under this paragraph should be made on the form prescribed therefor, but any written statement which in substance meets the requirements of this paragraph may be considered an application.

(b) *Applications for insurance under section 722(a) of Title 38, United States Code.* (1) Any person who is released from active military, naval, or air service (as that term is defined in sec. 101 of Title 38, United States Code) under other than dishonorable conditions, on or after April 25, 1951, shall be granted National Service life insurance as provided in § 8.111 upon compliance with the following conditions:

(i) Written application signed by the applicant.

(ii) Proof, satisfactory to the Administrator, that the applicant is suffering from a service-connected disability (or disabilities) for which compensation is or would be payable, if 10 per centum or more in degree and except for which such person would be insurable according to the standards of good health established by the Administrator (§ 8.1).

(iii) Written application for such insurance must be submitted within 1 year from the date service connection for any disability as determined by the Veterans Administration is established based on the promulgation of a rating subsequent to discharge. If it is shown by satisfactory evidence that the applicant was mentally incompetent during any part of the 1-year period, application may be filed within 1 year

after a guardian is appointed or within 1 year after the removal of such mental incompetency, whichever is the earlier date. If a guardian was appointed or the removal of such disability occurred before January 1, 1959, application under this paragraph may be made within 1 year after that date.

(iv) Payment of the required premium.

(2) An application for insurance under this paragraph should be made on the form prescribed therefor, but any written statement which in substance meets the requirements of this paragraph may be considered an application. If the applicant is mentally incompetent, the application may be made by a guardian, and, if required under the State law, after the court shall have authorized the fiduciary to make such application.

(3) The types of releases from service which are considered to be under "dishonorable conditions" as set forth in § 3.12 of this chapter will apply to the provisions of this paragraph.

(4) The term "service-connected disability (or disabilities) for which compensation is or would be payable, if 10 per centum or more in degree" as used in this paragraph includes all disabilities which are rated service-connected by the Veterans Administration except for dental ratings which are made for dental treatment only and ratings made under the provisions of 38 U.S.C. 602.

(c) *Application for insurance issued under section 621 of the National Service Life Insurance Act, as amended.* Insurance heretofore issued under section 621 of the National Service Life Insurance Act is subject to the provisions of § 8.112 (a) and (c). No National Service life insurance shall be granted to any person under such section on or after January 1, 1957, unless prior to such date an acceptable application accompanied by proper and valid remittances or authorizations for payment of premiums: (1) Was received by the Veterans Administration, (2) was placed in the mails properly directed to the Veterans Administration, or (3) was delivered to an authorized representative of any of the uniformed services.

(d) *Applications for insurance under section 725 of Title 38, United States Code.* (1) Effective May 1, 1965, any person (other than a person referred to in paragraphs (d)(5) and (6) of this section) heretofore eligible to apply for National Service life insurance after October 7, 1940, and before January 1, 1957, who is found by evidence satisfactory to the Administrator to be suffering: (i) From a service-connected disability (or disabilities) for which compensation is or would be payable, if 10 per centum or more in degree (paragraph (b)(4) of this section), and except for which such person would be insurable according to the standards of good health established by the Administrator; or (ii) from a non-service-connected disability, or a combination of service-connected and non-service-connected disabilities which: (*a*) renders such person uninsurable according to the standards of good health established by the Administrator, and (*b*) such person establishes to the satisfaction of the Administrator that he is unable to obtain commercial life insurance because of such uninsurability at substandard rates, and (*c*) such uninsurability existed as of October 13, 1964, shall upon meeting the criteria and conditions hereinafter stated in this paragraph be granted National Service life insurance.

(2) (i) If the applicant, notwithstanding his service-connected disability, is insurable according to the standards of good health established by the Administrator (§ 8.1), he shall be granted National Service Life Insurance as provided in § 8.112a (a) and (e).

(ii) If the applicant's service-connected disability or disabilities render him uninsurable and he is otherwise in good health, according to the standards of good health established by the Administrator (§ 8.1), he shall be granted insurance as provided in § 8.112a (b) and (e).

(iii) If the applicant has a non-service-connected disability, or a service-connected disability which combined with a non-service-connected disability renders him uninsurable according to the standards of good health established by the Administrator (§ 8.1), and such person establishes to the satisfaction of the Administrator that (*a*)

such uninsurability existed on October 13, 1964, and (*b*) he is unable to obtain commercial life insurance because of such uninsurability at substandard rates, he shall be granted National Service life insurance as provided in § 8.112a (c) and (e) or at the applicant's election be issued the net single premium 1-year endowment policy as provided in § 8.112a(d) in lieu of insurance issued under § 8.112a (c) and (e).

(3) Insurance may be granted under this paragraph subject to the following conditions: (i) Written application signed by the applicant; (ii) payment of the initially required premiums and submission of a signed agreement to pay the correct premium or premiums for his insurance when billed; or the payment of the required net single premium required for the 1-year endowment policy which may be issued to persons referred to in paragraph (d)(2)(iii) of this section; (iii) proof, satisfactory to the Administrator, that the applicant meets the health and other requirements provided in this paragraph; and (iv) application and tender of premiums must be mailed or otherwise delivered to the Veterans Administration before May 3, 1966.

(4) The following persons (other than a person referred to in paragraphs (d) (5) and (6) of this section) are eligible to apply for National Service Life Insurance under this paragraph:

(i) Any person in the active service (as that term is defined in section 601(c) of the National Service Life Insurance Act, as amended) in the land or naval forces (including the Coast Guard) of the United States, on October 8, 1940, and any person who entered such service (including those selected for training and service in such forces under the Selective Training and Service Act of 1940), after October 8, 1940, and prior to April 26, 1951, under orders to active duty for a period of not less than 31 days; and any person considered or deemed to have been in such service for the purposes of the National Service Life Insurance Act, as amended, or entitled to apply for National Service Life Insurance during such period.

(ii) Any person granted indemnity protection under section 2 of the Servicemen's Indemnity Act of 1951, who was separated from active service, under other than dishonorable conditions, on or after April 25, 1951, and prior to January 1, 1957, who is found by the Administrator to be suffering from a service-connected disability or disabilities for which compensation is or would be payable if 10 per centum or more in degree, and except for which such person would be insurable according to the standards of good health established by the Administrator.

(iii) Any person entitled to indemnity protection under section 2 of the Servicemen's Indemnity Act of 1951, who was ordered into the active service for a period exceeding 30 days and who was separated therefrom on or after April 25, 1951, and prior to January 1, 1957.

(iv) For the purpose of paragraphs (d)(4) (ii) and (iii) of this section, any person granted or entitled to indemnity protection under section 2 of the Servicemen's Indemnity Act of 1951 shall be deemed to have been in the active service. Also, for such purposes, any person who reentered active service on the date of separation or the following day shall be deemed to have been in continuous active service and not to have been separated therefrom.

(5) The following persons are not eligible for insurance under this paragraph:

(i) Any person who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States pursuant to the military order of the President dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief, Southwest Pacific Area, or other competent authority in the Army of the United States.

(ii) Any person who served in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945.

(iii) Any person while on active duty or active duty for training under a call or order to such duty for a period of

31 days or more during the 1-year eligibility period for this insurance.

(6) Any person who forfeited his rights to National Service Life Insurance by reason of being guilty of one of the offenses specified in § 8.61 and did not thereafter establish a new period of eligibility is not eligible for insurance under this paragraph.

(7) An application for insurance under this paragraph should be made on the form prescribed therefor, but any written statement which in substance meets the requirements of this paragraph may be considered an application. If the applicant is mentally incompetent, the application may be made only by the guardian and, if required under the State law, after the court shall have authorized the fiduciary to make such application.

(e) *Applications for insurance on the ordinary life plan issued under section 704(d) of title 38, United States Code.* (1) Any insured who has a National Service Life Insurance policy on the modified life plan which is in force under premium-paying conditions on the day before his 65th birthday may upon written application signed by the insured and payment of the required premium made to the Veterans Administration before such birthday, be granted insurance on the ordinary life plan in accordance with § 8.112b(c), without evidence of health. The ordinary life plan shall become effective on the 65th birthday of the insured and the premium rate for such insurance will be the applicable ordinary life premium for the attained age of the policyholder on that day.

(2) Any insured who has a National Service Life Insurance policy on the modified life plan which is in force by waiver of premiums under 38 U.S.C. 712 on the day before his 65th birthday (or such waiver of premiums is subsequently granted) shall automatically be granted insurance on the ordinary life plan in accordance with § 8.112b(c). The amount of insurance granted on such plan in accordance with that section shall not exceed one-half of the face amount of the modified life insurance policy in force on the day before his 65th birthday. The ordinary life plan shall become effective on the 65th birthday of the insured and the premium rate for such insurance will be the applicable ordinary life premium for the attained age of the policyholder on that day.

(3) An application for insurance under this paragraph should be made on the form prescribed therefor, but any written statement which in substance meets the requirements of this paragraph may be considered an application. If the applicant is mentally incompetent, the application may be made only by a guardian and, if required under the State law, after the court shall have authorized the fiduciary to make such application.

[24 FR 7326, Sept. 11, 1959, as amended at 26 FR 1856, Mar. 3, 1961; 30 FR 3643, Mar. 19, 1965; 34 FR 5064, Mar. 11, 1969; 42 FR 62367, Dec. 12, 1977]

§ 8.1 Definition of and criteria for "good health".

(a) *Definition.* The words "good health," when used in connection with insurance, mean that the applicant is, from clinical or other evidence, free from disease, injury, abnormality, infirmity, or residual of disease or injury to a degree that would tend to weaken or impair the normal functions of the mind or body or to shorten life.

(b) *Criteria.* Underwriting standards for determining whether an individual is in "good health," based as far as practicable on general insurance usage, will be developed and published by the Chief Benefits Director. He is responsible for readjusting such standards to reflect medical advances and current experience affecting mortality and disability.

[33 FR 3176, Feb. 20, 1968]

Effective Date

§ 8.2 Effective date.

(a) *Effective date of insurance applied for under section 722(a) of Title 38, United States Code.* (1) The effective date of National Service life insurance issued under the provisions of section 722(a) of Title 38, United States Code, shall not be established in any event prior to April 25, 1951, nor prior to the date of entry into active service.

(2) Subject to the limitations in paragraph (a)(1) of this section, the effective date of such insurance may be established upon written request of the applicant as follows:

(i) As of the date on which valid application and tender of premium are made.

(ii) As of the first day of the month in which valid application and tender of premium are made.

(iii) As of the first day of the month following the month in which valid application and tender of premium are made.

(iv) As of the first day of any month, but not more than 6 months prior to the month in which valid application and tender of premium are made: *Provided,* That there be paid (*a*) an amount equal to the full reserve on the insurance at the end of the month prior to the month in which application is made, and (*b*) the full premium on the amount of insurance for the month in which application is made.

(3) Unless otherwise specified by the applicant, the effective date of such National Service life insurance shall be established as of the date on which valid application and tender of premiums are made.

(b) *Effective date of insurance applied for under section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.* (1) The effective date of National Service life insurance issued under the provisions of section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code, may be established upon written request of the applicant as follows:

(i) As of the date on which valid application and tender of premiums are made.

(ii) As of the first day of the month in which valid application and tender of premiums are made.

(iii) As of the first day of the month following the month in which valid application and tender of premiums are made.

(iv) As of the first day of any month, but not more than 6 months prior to the month in which valid application and tender of premiums are made: *Provided,* That there be paid (*a*) an amount equal to the full reserve on the insurance at the end of the month prior to the month in which application is made, and (*b*) the full premium on the amount of insurance for the month in which application is made.

(2) Unless otherwise specified by the applicant, the effective date of such National Service life insurance shall be established as of the date on which valid application and tender of premiums are made.

(c) *Effective date of insurance applied for under section 725 of Title 38, United States Code.* The effective date of National Service Life Insurance issued under the provisions of 38 U.S.C. 725 shall be the date the application and tender of premiums are delivered to the Veterans Administration, but not prior to May 1, 1965, nor later than May 2, 1966. If the application and tender of premiums are forwarded by mail, properly addressed to the Veterans Administration, the postmark date will be taken as the date of delivery.

[24 FR 7327, Sept. 11, 1959, as amended at 30 FR 3644, Mar. 19, 1965]

Premiums

§ 8.3 Premium rates.

National Service Life Insurance is granted at the premium rate for the age nearest the birthday anniversary of the applicant at the time the policy becomes effective. The premium rates for National Service Life Insurance are as follows:

(a) The premium rates for participating insurance, other than policies of such insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704(b) or (d), respectively, are based on the American Experience Table of Mortality and interest at the rate of 3 per centum per annum. The premium rates for participating insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704 (b) or (d), respectively, are based on the 1958 Commissioners Standard Ordinary Basic Mortality Table and interest at the rate of 3 per centum per annum.

(b) The premium rates for nonparticipating insurance on which the requirements of good health have been

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waived under the provisions of section 602(c)(2) of the National Service Life Insurance Act, as amended, and for policies of such insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704 (c) or (d), respectively, are based on the American Experience Table of Mortality and interest at the rate of 3 per centum per annum.

(c) The premium rates for insurance issued under section 620 of the National Service Life Insurance Act, as amended, 38 U.S.C. 722(a), and for policies of such insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704 (c) or (d), respectively, are based on the Commissioners 1941 Standard Ordinary Table of Mortality and interest at the rate of 2¼ per centum per annum.

(d) The premium rates for the term insurance issued under section 621 of the National Service Life Insurance Act, as amended, are based on the Commissioners 1941 Standard Ordinary Table of Mortality and interest at the rate of 2¼ per centum per annum. Policies of such term insurance which are converted to insurance on the modified life plan under 38 U.S.C. 704(c) and such insurance subsequently issued on the ordinary life plan under 38 U.S.C. 704(d), shall for the purposes of such provisions of law be deemed to have been issued under 38 U.S.C. 723(b) (see paragraph (e) of this section).

(e) The premium rates for permanent plan insurance or limited convertible term insurance issued under 38 U.S.C. 723(b), and for policies of such insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704 (c) or (d), respectively, are based on table X-18 (1950-54 Intercompany Table of Mortality) and interest at the rate of 2½ per centum per annum.

(f) The premium rates for insurance issued under 38 U.S.C. 725(b) and for policies of such insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704 (c) or (d), respectively, are based on the 1958 Commissioners Standard Ordinary Basic Mortality Table and interest at the rate of 3½ per centum per annum. Such premium rates may be adjusted at the time of issue as the Administrator determines to be necessary for sound actuarial operations, and thereafter such premiums may be adjusted as the Administrator determines to be so necessary but at intervals of not less than 2 years. Further, an additional premium to cover the administrative cost of such insurance (including any total disability income provision attached thereto) to the Government as determined by the Administrator at the time of issue shall be charged for such insurance and provision and thereafter such cost may be adjusted as the Administrator determines to be so necessary but at intervals of not less than 5 years.

(g) The premium rates for insurance issued under 38 U.S.C. 725(c) and for policies of such insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704 (c) or (d), respectively, are based on the American Experience Table of Mortality and interest at the rate of 3½ per centum per annum. Such premium rates may be adjusted at the time of issue as the Administrator determines to be necessary for sound actuarial operations, and thereafter such premiums may be adjusted from time to time as the Administrator determines to be necessary. Further, an additional premium to cover the administrative cost to the Government as determined by the Administrator at the time of issue of such insurance (including any total disability income provision subsequently attached thereto) shall be charged for such insurance and provision and thereafter such cost may be adjusted as the Administrator determines to be necessary but at intervals of not less than 5 years. For the purpose of establishing the initial premium rates to be charged for insurance issued under 38 U.S.C. 725(c), and for any subsequent adjustment thereof, the service-connected disabled group and the non-service-connected disabled group may be separately classified, and charged a different premium rate for the protection granted. Individuals within each of the two groups may be separately rated, depending upon the nature of their impairment and the risk involved.

[30 FR 3644, Mar. 19, 1965]

§ 8.4 Premiums on National Service life insurance.

National Service life insurance is granted in consideration of and subject to the terms and conditions set forth in the policy and in further consideration of the payment of the monthly premium due and payable on the day the policy takes effect and on the same day of each succeeding month during the lifetime of the insured or for the period for which premiums are due and payable as provided by the terms and conditions of the policy contract.

[13 FR 7110, Nov. 27, 1948]

§ 8.5 Due date of premiums.

Premiums on National Service Life Insurance are due and payable monthly in advance in legal tender of the United States of America to the Veterans Administration in the city of Washington, District of Columbia, or any field station of the Veterans Administration authorized to accept premiums. Premiums may be paid quarterly, semiannually or annually, in advance. In any case in which premiums are paid in advance the premium payable will be the sum of the monthly premiums for the period discounted at the same interest rate as that on which the premium charges are based as set forth in § 8.3. At maturity the discounted value of the premiums paid in advance beyond the current month shall be refunded to the beneficiary. If any premium be not paid when due, the policy shall cease and become void except as otherwise provided.

[30 FR 3645, Mar. 19, 1965]

§ 8.6 Payment of premiums; insured in active service or entitled to retirement pay.

Premiums on National Service life insurance may be paid by persons in the active military, naval, or Coast Guard service or by persons entitled to retirement pay from such services: (a) By direct remittance to the Veterans' Administration, or (b) by allotment of service pay or retirement pay.

[16 FR 12989, Dec. 27, 1951]

§ 8.7 Payment of insurance premiums by mail.

When it appears by satisfactory evidence that the person to whom National Service life insurance has been granted, or any person acting on his behalf has deposited in the mail within the grace period or in accordance with § 8.7b an envelope addressed to the Veterans Administration, Washington, D.C., or any field station of the Veterans Administration containing money, check, draft, or money order, in payment of a premium, such insurance will not lapse for a nonpayment of such premium: *Provided*, That any such check or draft is paid on presentation for payment or the conditions of § 8.7a are met.

[33 FR 364, Jan. 10, 1968]

§ 8.7a Correction of errors.

(a) Where timely tender of the required premium is made by check or draft which is not paid on presentation for payment, but it is shown by satisfactory evidence that such nonpayment was due to an error on the part of the bank on which such check or draft was drawn, or was the result of an error in the instrument, and not for lack of funds, the insured will be given an additional period of 31 days from the date of letter notifying him of such nonpayment in which to tender an amount sufficient to pay all premiums through the current month.

(b) Where timely tender of the required premium is made by check or draft which may not be presented for payment because of an error in execution thereof, but it is shown by satisfactory evidence that the remitter had sufficient funds in the bank on which such check or draft was drawn which would have enabled the bank to make payment had it been properly executed and presented, the insured will be given an additional period of 31 days from the date of letter notifying him of such error in which to tender an amount sufficient to pay all premiums through the current month.

[33 FR 364, Jan. 10, 1968]

§ 8.7b Acceptance of a late premium.

Where a premium on National Service life insurance is not paid within the grace period but payment is tendered during the lifetime of the insured and within 61 days of the due date, such tender may be regularly applied as a timely premium payment.

[33 FR 364, Jan. 10, 1968]

§ 8.7c Revival of insurance.

(a) If the sole reason death or total disability benefits under a policy of National Service life insurance cannot be granted is that the policy had lapsed, the insurance will be considered in force under premium-paying conditions on the date of death or the date of commencement of total disability if,

(1) On the date of lapse there were accrued dividends, not then payable, resulting from premiums paid since the last anniversary date of the policy and such dividends were equal to or greater in amount than the total of the monthly premiums which have become due from and including the date of lapse to the date of death or date of commencement of total disability, and/or

(2) At the end of the grace period for the unpaid premium causing lapse there were due and payable to the policyholder unpaid dividends, refundable premiums, pure insurance risk credits, other refundable credits or total disability benefit payments arising from the policyholder's U.S. Government or National Service life insurance which are equal to or greater in amount than the total of the monthly premiums which have become due from and including the date of lapse to the date of death or date of commencement of total disability.

(3) For purposes of this section amounts under paragraphs (a)(1) and (2) of this section may be combined. In that case, the amount, if any, of dividend accrued under paragraph (a)(1) of this section will first be determined and the amount available under paragraph (a)(2) of this section, if any, will be added thereto for the purpose of determining if the total amount thus available is equal to or greater than the total of monthly premiums which have become due.

(4) In determining the amount of monthly premiums which have become due under paragraphs (a)(1) and (2) of this section a shortage of 10 percent per monthly premium may be allowed for a period not to exceed 3 months.

(5) In determining the monthly premiums which have become due for adjustment purposes under paragraphs (a)(1) and (2) of this section, the premium for the monthly due date immediately preceding the date of death or date of commencement of total disability may be omitted because of the coverage provided by the allowable grace period (§§ 8.14 and 8.15) and if the conditions of paragraph (b) of this section are met, the premium for the second due date immediately preceding the date of death or date of commencement of total disability may be omitted.

(6) When a policy is deemed in force under premium-paying conditions by operation of this section, the amount of any shortage included in the calculation and the premium for any monthly due date omitted in the calculation will become a lien against the policy.

(7) The provisions of this section may be applied if, on the date of death, the insurance is in force under the extended term insurance provision (§ 8.29) and a policy loan was outstanding on the date of lapse or a dividend deposit balance was included in the cash value as determined at time of lapse.

(8) If accrued dividends under paragraph (a)(1) of this section and/or amounts due and payable under paragraph (a)(2) of this section exist in connection with more than one policy of the same veteran and one or more policies lapsed prior to the date of death or date of commencement of total disability, the amounts available will be related first to the policy or policies on which they arose if such policy or policies are lapsed. Any amount available under paragraphs (a)(1) and (2) of this section which is not required to place in force the policy upon which it arose or which is insufficient to place in force the policy

upon which it arose, may be combined with similar amounts available on any other policy whenever the total of such amounts is sufficient to place another policy in force.

(9) Where more than one policy is involved and credits are not needed or are insufficient to revive the policy on which the credits arose, the credits will be used insofar as they are sufficient to revive the policy or policies under which the most insurance is payable.

(10) No total disability income provision will be considered in force under this section unless it lapsed at the same time as the life insurance contract and both the life insurance and total disability income provision can be considered in force through the same date and benefits are payable under the total disability income provision. An exception will be a paid-in-full limited pay contract on which total disability income provision premiums are due and payable to age 65.

(11) When a total disability income provision lapsed at the same time as the life insurance, the premium for the provision will be considered separately in determining if the amounts available are equal to or in excess of the monthly premiums which have become due. In such a case if the amounts available are sufficient, both the life insurance and the provision will be revived. If the amounts are insufficient for that purpose, they will be applied to revive the policy or policies with the greatest amount payable in death cases or the policy or policies providing the greatest life insurance and total disability benefit in total disability cases.

(12) Accrued dividends and/or credits on any policy of National Service or U.S. Government life insurance held by the policyholder may be considered for the purpose of this section.

(b) If the sole reason death or total disability benefits under a policy of National Service life insurance cannot be granted is that the policy had lapsed, the insurance will be considered in force on the date of death or date of commencement of total disability if,

(1) The policyholder died or became totally disabled within 61 days of the due date of the unpaid premiums, and

(2) The policy prior to the lapse had been in force for 5 years or more. In determining in-force status under this subparagraph if the original effective date of the insurance (when necessary, include predecessor contracts involving renewal, conversion or replacement/reinstatement under 38 U.S.C. 781) is 5 years or more earlier than the date of death or date of total disability and during the 5 years immediately preceding the date of lapse the insurance has not been lapsed at any one time in excess of 6 months, the requirement will be satisfied. When insurance is considered in force under this section the amount of the monthly premium due on the date of lapse and the following monthly premium(s) will become a lien against the policy.

(3) The provisions of this section may be applied if, on the date of death, the insurance is in force under the extended term insurance provision (§ 8.29) and a policy loan was outstanding on the date of lapse or a dividend deposit balance was included in the cash value as determined at time of lapse.

[33 FR 17915, Dec. 3, 1968]

§ 8.8 Deduction of insurance premiums from compensation, retirement pay, or pension.

The insured under a National Service life insurance policy which is not lapsed may authorize the monthly deduction of premiums from disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension that may be due and payable to him under any laws administered by the Veterans Administration in accordance with the following provisions.

(a) The authorization must be in writing over the signature of the insured, or his legal representative, and, whenever practicable, on such forms as may be prescribed by the Veterans Administration. If insured is incompetent and has no legal representative and has a wife to whom benefits are being paid pursuant to section 3202(f)

of Title 38, United States Code, and § 13.57 of this chapter, she may authorize payment of insurance premiums through the deduction system. If insured is incompetent and has no legal representative and an institutional award has been made in his behalf, the authorization may be executed by the Director of the field station in which the insured is hospitalized or receiving domiciliary care, and in appropriate cases by the chief officers of State hospitals or other institutions to whom similar awards may have been approved.

(b) The monthly disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension so due and payable must be equal to, or in excess of, the amount of the insurance premium figured on a monthly basis.

(c) The authorization may be canceled by the insured at any time by notice in writing to the Veterans' Administration. Such cancellation will be effective on the first day of the month following the month in which it is received by the Veterans' Administration.

(d) If the benefits payable to the insured are apportioned under the regulations of the Veterans' Administration now in effect or hereafter issued, the deduction authorized by the insured shall be from that portion awarded to the insured under such regulations.

(e) The deduction authorized by a policyholder issued insurance under 38 U.S.C. 725 will be automatically adjusted by the Veterans Administration to take cognizance of any premium adjustment made by the Administrator on such insurance provided the benefit payments due and payable to the insured are of an amount sufficient to pay the monthly insurance premium.

[13 FR 7110, Nov. 27, 1948, as amended at 14 FR 5241, Aug. 24, 1949; 24 FR 7327, Sept. 9, 1959; 28 FR 1542, Feb. 19, 1963; 30 FR 3645, Mar. 19, 1965]

§ 8.9 Authorization for deduction of insurance premiums from compensation, retirement pay, or pension.

The authorization for deductions from disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension, to be acceptable for the payment of insurance premiums, must be executed and mailed or otherwise delivered to the Veterans Administration while the insurance is not lapsed. Such an authorization will be effective against the benefit payment for the month in which it is mailed or otherwise delivered to the Veterans Administration, unless the insured elects to have the authorization become effective against the benefit payment for a succeeding month. However, the deduction made from the benefit payment for the month in which the authorization becomes effective shall be for the insurance premium due in the succeeding calendar month. When premium deductions are authorized in accordance with the provisions of Veterans Administration regulations, the Veterans Administration will make monthly deductions from the benefit payment due and payable to the insured of an amount sufficient to pay the monthly insurance premium. Such deductions will continue so long as the benefit payment due and payable to the insured is sufficient to pay the monthly insurance premium or until the authorization is revoked by the veteran or otherwise terminated.

[24 FR 7327, Sept. 11, 1959]

§ 8.10 Premiums to be deducted from compensation, retirement pay, or pension treated as paid for purpose of preventing lapse.

When premium deductions are authorized by the insured under National Service life insurance, in accordance with the provisions of Veterans Administration regulations, the insurance premium will be treated as paid for the purpose of preventing lapse of the insurance, although such deduction is not in fact made, if upon the due date of the premium there is due and payable to the insured an amount of disability compensation, death compensation, dependency and indemnity and compensation, retirement pay, disability pension, or death pension sufficient to provide the payment. Any premium authorized to be deducted from

such compensation, retirement pay, or pension, due and payable to the insured and not actually paid, shall be deducted from the amount of such current compensation, retirement pay, or pension that may become due and payable to the insured. The amounts so deducted for premiums shall, except as otherwise provided in §§ 8.102 and 8.103, be deposited and covered into the Treasury to the credit of the National Service Life Insurance Fund.

[24 FR 7328, Sept. 11, 1959]

§ 8.11 Termination of the authorization to deduct insurance premiums from compensation, retirement pay, or pension.

Deduction of insurance premiums on National Service life insurance shall cease and the authorization shall terminate if the disability compensation, death compensation, dependency and indemnity compensation, retirement pay, disability pension, or death pension becomes insufficient to provide the premium, or if such compensation, retirement pay, or pension is no longer due and payable to the insured. If authorization was executed by the Director of a Veterans Administration hospital or domiciliary or chief officer of a State hospital or other institution to make deductions from an institutional award, the authorization will cease and terminate at the termination of the institutional award, and, if subsequent premiums are to be paid by deduction from monthly benefit payments, another authorization must be executed by the insured or his legal representative or his wife. (See § 8.8(a).) The insurance shall lapse after the termination or cancellation of the authorization to deduct premiums from such compensation, retirement pay, or death pension, unless the premium be otherwise paid within the grace period. The insured will be notified, by letter directed to his last address of record, of the termination of the authorization to deduct premiums; but the failure to give such notice or the failure to receive such notice shall not prevent lapse of the insurance.

[28 FR 1542, Feb. 19, 1963]

Calculation of Time Period

§ 8.12 Calculation of time period.

If the last day of a time period specified in § 8.7a, 8.7b or 8.7c or allowed for filing an application for National Service life insurance or for applying for reinstatement thereof, or paying premiums due thereon, falls on a Saturday, Sunday, or legal holiday, the time period will be extended to include the following workday.

[33 FR 17916, Dec. 3, 1968]

Grace Period

§ 8.14 Establishment of grace period.

For the payment of any premium under a National Service life insurance policy, a grace period of 31 days without interest will be allowed, during which time the policy will remain in force; but if the policy shall mature within the grace period, the unpaid premium or premiums shall be deducted from the amount of insurance payable.

[13 FR 7111, Nov. 27, 1948]

§ 8.15 Computation of grace period.

For the purpose of § 8.14 the grace period shall be computed to include 31 days from and after the date on which the premium was due. When a payment of premium is mailed the postmark date will be accepted as the date on which the payment was tendered. The monthly premium when paid within the grace period shall continue the insurance in force for the month for which the premium was due. If a premium is not paid before the expiration of the grace period, the effective date of lapse shall be the due date of the unpaid premium.

[33 FR 17916, Dec. 3, 1968]

Lapse

§ 8.16 Lapse for nonpayment of premium.

If any premium be not paid when due, the National Service life insurance policy shall cease and become void, except as otherwise provided in the insurance regulations and policy.

[29 FR 3401, Mar. 14, 1964]

§ 8.17 Nonlapse while insured is in active military, naval, or Coast Guard service.

Except as provided in § 8.18, National Service life insurance will not lapse while the insured is in the active military, naval, or Coast Guard service of the United States, if an allotment of active service pay had been established to cover premiums for such insurance.

[13 FR 7111, Nov. 27, 1948]

§ 8.18 Lapse while insured is in active military or naval service.

National Service life insurance will lapse and terminate while the insured is in the active military or naval service of the United States:

(a) If the insured fails to designate a method of payment of premiums at the time of applying or at any time elects to pay premiums on said insurance otherwise than by allotment of pay and such premiums are not paid prior to expiration of the grace period.

(b) If the service department shall discontinue the allotment and premium is not otherwise paid prior to expiration of the grace period.

[13 FR 7111, Nov. 27, 1948, as amended at 24 FR 7328, Sept. 11, 1959]

§ 8.19 Lapse at discharge or resignation from active service.

When the insured under a National Service life insurance policy shall provide for payment of premiums by allotment of pay, any previously authorized method of payment of premiums shall be deemed to be revoked. The insurance will lapse upon termination of the allotment because of discharge or resignation from the active service unless the premium be paid prior to expiration of the grace period.

[13 FR 7111, Nov. 27, 1948]

REINSTATEMENT

§ 8.22 Reinstatement of National Service Life Insurance.

(a) *Reinstatement of National Service Life Insurance except insurance reinstated pursuant to section 781 of title 38, United States Code, or section 725 of title 38, United States Code.* Subject to the National Service Life Insurance provisions of title 38, United States Code, and Veterans Administration regulations issued thereunder, any insurance which has lapsed or may hereafter lapse and which has not been surrendered for a cash value or for paid-up insurance may be reinstated upon written application signed by the applicant, and, except as hereinafter provided in this paragraph, upon payment of all premiums in arrears, with interest from their serveral due dates, provided such applicant at the time of application and tender of premiums is in the required state of health as shown in § 8.23 (a) or (b), whichever is applicable, and submits evidence thereof at the time of application and tender of premiums. Interest on premiums in arrears shall be at the rate of 5 per centum per annum, compounded annually, to the first monthly premium due date after July 31, 1946; at the rate of 4 per centum per annum, compounded annually, to the first monthly premium due date after August 31, 1971, and thereafter at the rate of 5 per centum per annum compounded annually: *Provided*, That no interest on premiums in arrears will be required if reinstatement is effected within 6 months from the due date of the premium in default. The payment or reinstatement of any indebtedness against any policy must be made, and if such indebtedness with interest exceeds the reserve of the policy at the time of application for reinstatement thereof, then the amount of such excess shall be paid by the applicant as a condition of the reinstatement of the indebtedness and of the policy. A lapsed National Service Life Insurance policy which is in force under extended term insurance may be reinstated without health statement or other medical evidence, if application and tender of premiums with the required interest are made not less than 5 years prior to the date such extended insurance would expire. In any case in which the extended insurance under an endowment policy provides protection to the end of the endowment period, such policy may be reinstated upon application and payment of the premiums with the required interest, and health statement or other medical evidence will not be required. Subject to the terms and

conditions of § 8.85, National Service Life Insurance on the level premium term plan may be reinstated within 5 years of the date of lapse upon written application by the insured accompanied by evidence of insurability and tender of two monthly premiums, one for the month of lapse, the other for the month of reinstatement.

(b) *Applications for reinstatement of insurance pursuant to section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.* (1) Any person who, while in the active service on or after April 25, 1951, and prior to January 1, 1957, surrendered a permanent plan policy of National Service life insurance which was not lapsed, for its cash value under the provisions of § 8.27(a) or (b), or under § 8.114 if the policy had no cash value, upon written application made by any such person on or after January 1, 1959, within the period set forth in paragraph (b)(2) of this section and upon meeting the other conditions of that subparagraph, may reinstate such surrendered National Service life insurance (or any portion thereof in multiples of $500, not less than $1,000) without medical examination upon payment of (i) an amount required to provide the full reserve of the insurance at the end of the month prior to the month in which application is made and (ii) the full premium on the amount of insurance for the month in which application is made. If the applicant is mentally incompetent the application for reinstatement under this paragraph may be made only by the guardian (committee or conservator), and, if required under the State law, after the court shall have authorized the fiduciary to make such application.

(2) Any person whose permanent plan insurance was surrendered under the conditions provided in this paragraph, and who had continuous indemnity protection from the date of surrender to January 1, 1957, continuous active service from January 1, 1957, to January 1, 1959, and continuous active duty thereafter, may make application for reinstatement under this paragraph while on continuous active duty or within 120 days after separation from such service or duty. A person who reenters active service or duty on the date of separation or the following day shall be deemed to be in continuous active service or on continuous active duty.

(c) *Reinstatement of insurance issued under section 725, title 38, United States Code.* Subject to the National Service Life Insurance provisions of title 38, United States Code, and Veterans Administration regulations issued thereunder, any insurance issued under 38 U.S.C. 725 which has been lapsed for not more than 5 years, and which has not been surrendered for a cash value or for paid-up insurance may be reinstated upon written application signed by the applicant, payment of the monetary requirements hereinafter set forth in this paragraph, and submission of satisfactory evidence that at the time of application and tender of monetary requirements, the applicant was in the required state of health as shown by § 8.23 (a) or (b), whichever is applicable. The payment or reinstatement of any indebtedness against any policy must be made, and if such indebtedness with interest exceeds the reserve of the policy at the time of application for reinstatement thereof, then the amount of such excess shall be paid by the applicant as a condition of the reinstatement of the indebtedness and of the policy. A policy which has been lapsed for 6 premium months or less may be reinstated upon meeting the health requirements as shown by § 8.23(a) and payment of all premiums in arrears. A policy which has been lapsed for more than 6 premium months but not more than 5 years may be reinstated upon meeting the health requirements as shown by § 8.23(b) and payment of all premiums in arrears with interest from their several due dates at the rate of 4 per centum per annum compounded annually, to the first monthly premium due date after August 31, 1971, and thereafter at the rate of 5 per centum per annum compounded annually. A lapsed policy which is in force under extended term insurance may be reinstated without health statement or other medical evidence. If application and tender of the required premiums and interest are made within 5 years

after the date of lapse and not less than 5 years prior to the date such extended term insurance would expire. In any case in which the extended insurance under an endowment policy, which has not been lapsed for more than 5 years, provides protection to the end of the endowment period, such policy may be reinstated, without health statement or other medical evidence, upon application and tender of the required premiums and interest prior to the end of the endowment period.

(d) *Effective date of reinstatements.* Reinstatement is effected when an acceptable application and the required monetary payments are delivered to the Veterans Administration. If application for reinstatement is submitted by mail, properly addressed to the Veterans Administration, the postmark date shall be the date of delivery. The effective date of reinstatement of the insurance shall be the last monthly premium due date prior to the delivery or postmark date of the application for reinstatement, except where reinstatement is effected on the due date of a premium, then in such case that date shall be the reinstatement date.

(e) *Inquiry prior to expiration of the grace period.* When the insured under a National Service Life Insurance policy makes inquiry prior to the expiration of the grace period disclosing a clear intent to continue insurance protection, such as a request for information concerning premium rates or conversion privileges, etc., and additional reasonable period not exceeding 60 days may be granted for payment of premiums due; but the premiums in any such case must be paid during the lifetime of the insured.

[24 FR 7323, Sept. 11, 1959, as amended at 30 FR 3645, Mar. 19, 1965; 36 FR 4383, Mar. 5, 1971; 36 FR 17855, Sept. 4, 1971]

§ 8.23 Health requirements.

National Service life insurance on any plan may be reinstated if application and tender of premiums are made:

(a) Within 6 premium months including the premium month for which the unpaid premium was due, provided the applicant be in as good health on the date of application and tender of premiums as he was on the last day of the grace period of the premium in default and furnishes satisfactory evidence thereof.

(b) After expiration of the 6-month period mentioned in paragraph (a) of this section, provided applicant is in good health (§ 8.1) on the date of application and tender of premiums and furnishes satisfactory evidence. If the insurance to be reinstated was issued under § 8.0 (b), (d)(2)(i), or (d)(2)(ii) and application is made within 1 year of the date of lapse, any service-connected disability existing at the time the insurance was issued will be waived for the purpose of reinstatement (including natural progression of the condition since time of issuance). If the insurance to be reinstated was issued under § 8.0(d)(2)(iii) and application is made within 1 year of the date of lapse, any non-service-connected disability, or service-connected disability which combined with a non-service-connected disability rendered the insured uninsurable as of October 13, 1964, will be waived for the purpose of reinstatement (including natural progression).

[33 FR 365, Jan. 10, 1968, as amended at 33 FR 12002, Aug. 23, 1968]

§ 8.24 Application and medical evidence.

The applicant for reinstatement of National Service life insurance, during his lifetime and within 5 years after the date of lapse if the insurance was issued under 38 U.S.C. 725, must submit a written application signed by him and furnish satisfactory evidence of health as required in § 8.23 at the time of application. Applicant's own statement of comparative health may be accepted as proof of insurability for the purpose of reinstatement under § 8.23(a), but, whenever deemed necessary in any such case, report of physical examination may be required. Applications for reinstatement submitted after expiration of the applicable period mentioned in § 8.23(a) must be accompanied by satisfactory evidence of good health. If the insurance becomes a claim after the tender of the amount necessary to meet reinstatement requirements but before full compliance with the requirements of

this section, and the applicant was in a required state of health at the date that he made the tender of the amount necessary to meet reinstatement requirements, and that there is satisfactory reason for his noncompliance, the Director, Insurance Service, in Central Office and Insurance Officers, Veterans Administration Centers, St. Paul, Minn., and Philadelphia, Pa., may, if the applicant be dead, waive any or all requirements of this section (except payment of the necessary premiums) or, if the applicant be living, allow compliance with this section as of the date the required amount necessary to reinstate was received by the Veterans Administration.

[33 FR 365, Jan. 10, 1968]

DIVIDENDS

§ 8.26 How paid.

(a) Except as hereinafter provided in this paragraph, a National Service Life Insurance policy shall participate in and receive such dividends from gains and savings as may be determined by the Administrator of Veterans Affairs. Dividends becoming payable after January 1, 1952, shall be payable on the date preceding the anniversary of the policy unless the Administrator shall declare them payable on some other date. Dividends are not payable on insurance:

(1) Issued or reinstated under the provisions of section 602(c)(2) of the National Service Life Insurance Act, as amended, where the requirements of good health were waived at the time of such issue or reinstatement;

(2) Issued under sections 620 and 621 of the National Service Life Insurance Act, as amended;

(3) Issued under sections 704(c), 722(a), 723(b), and 725 of Title 38, United States Code;

(4) Issued on the ordinary life plan under section 704(d) of title 38, United States Code, to replace the amount of insurance reduced under a modified life plan policy issued under 38 U.S.C. 704(c); and

(5) On which premiums are waived, in whole or in part, under the provisions of section 622 of the National Service Life Insurance Act, as amended, and 38 U.S.C. 724 for the period during which such premium waiver is in effect.

(b) Unless and until the Veterans Administration receives a written request from the insured that National Service life insurance dividends be paid in cash, or that they be used to pay an insurance indebtedness, or that they be placed on deposit or be used to pay premiums in advance, or that they be used to pay the premiums on a particular policy or policies, any such dividends shall be held to the credit of the insured to be applied to pay monthly premiums becoming due and unpaid after the date such dividends are payable on any National Service or United States Government life insurance policy or policies held by the insured: *Provided*, That such dividend credits will be applied as of the due date of any unpaid premium. Dividend credits will earn interest at such rate and in such manner as the Administrator may determine.

(c) In the event premiums on more than one policy having the same premium due date are unpaid and the dividend credit of the insured for application to payment of premiums is not sufficient to keep all policies in force, in the absence of instructions to the contrary by the insured, such dividend credit will be applied to pay premiums in such manner as will provide the maximum amount of insurance protection.

(d) At the expiration of any term period, dividend credit of the insured held for payment of premiums will be applied to pay the required premium for renewal of term insurance unless the insured requests otherwise in writing prior to the expiration of the term period.

(e) A request for payment of dividends in cash or for other disposition will be effective as of the date the request is delivered to the Veterans' Administration: If forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery: If forwarded through military channels by the insured while in military service, the date the request is placed in military channels will be accepted as the date of delivery. Unless otherwise stipulated by the insured, such request will remain in force until revoked in

writing signed by the insured and delivered to the Veterans' Administration.

(f) Dividend credit of the insured held for payment of premiums may not be used to satisfy any indebtedness due the United States without the insured's consent. If the insured requests payment of such dividend credit, or any unused portion thereof, in cash, or requests that such credit be left to accumulate on deposit, as provided in paragraph (g) of this section, then any indebtedness due the United States, such as described in § 8.60 will be recovered therefrom.

(g) At the written request of the insured, National Service life insurance dividends may be left to accumulate on deposit at interest which will be credited in such manner and at such rate as the Administrator may determine: *Provided*, That the policy is in force on a basis other than extended term insurance or level premium term insurance. Dividend credit of the insured held for payment of premiums or dividends left to accumulate on deposit as provided in this paragraph may be applied to the payment of premiums in advance upon written request of the insured made before default in payment of a premium. Dividends on deposit under the provisions of this paragraph will be used in addition to the reserve on the policy for the purpose of computing the period of extended term insurance or the amount of paid-up insurance as provided in §§ 8.29 and 8.30, respectively. Any dividend credit of a person who no longer has insurance in force by payment or waiver of premiums will be paid in cash to such person. If a person has a dividend credit option on a lapsed level premium term policy or a permanent plan policy on which extended term insurance has expired and such person has another policy in force by payment or waiver of premiums, any dividend credit or unpaid dividends on the lapsed policy, in the absence of instructions from the insured to the contrary, will be transferred to the policy which is in force and will be held on such policy as a dividend credit. Such dividend credit will be deemed to have accrued on the policy which is in force. Upon maturity of the policy, any dividend on deposit, any unpaid dividend payable in cash, and any dividend credit accruing from such policy which cannot be used to pay premiums will be paid to the person currently entitled to receive payments under the policy. If the policy is not in force at death, any such unpaid dividends and dividend credits will be paid to the insured's estate.

(h) Any insured receiving an annual dividend in cash may return such dividend check or an equivalent amount of money in order to have the dividend retained under the deposit or credit option. The return of such dividend must be made during the lifetime of the insured and before the end of the calendar year during which the dividend was paid. Dividends returned under this provision are not available for the payment of premiums, receipt of interest, or calculation of cash value prior to the postmark date of the returned check.

[17 FR 2362, Mar. 19, 1952, as amended at 18 FR 3715, June 30, 1953; 24 FR 5021, June 20, 1959; 25 FR 7369, Aug. 5, 1960; 28 FR 12545, Nov. 23, 1963; 30 FR 3646, Mar. 19, 1965; 32 FR 13927, Oct. 6, 1967; 37 FR 3352, Feb. 15, 1972]

§ 8.26a Special dividends.

(a) Any special National Service Life Insurance dividend declared prior to January 1, 1952, shall be paid in cash. Such special dividends shall not be accepted to accumulate on deposit and, except as provided in § 8.7c, shall not be available to pay premiums.

(b) Effective June 25, 1970, no claim by an insured for payment in cash of a special dividend declared prior to January 1, 1952, shall be processed by the Veterans Administration unless such claim was received within 6 years after such dividend was declared. Whenever any claim for payment of a special dividend, the processing of which is barred by this paragraph, is received in the Veterans Administration, it shall be returned to the claimant with a copy of section 707(b) of title 38, United States Code, and such action shall be a complete response without further communication.

(c) The limitation for filing claim in paragraph (b) of this section shall not

preclude payment of any unpaid special dividend to the beneficiary upon maturity of a policy because of the insured's death.

[36 FR 4384, Mar. 5, 1971]

CASH VALUE AND POLICY LOAN

§ 8.27 Cash value.

(a) *Cash value on participating National Service Life Insurance other than as provided in paragraph (e) of this section.* Provisions for cash value, paid-up insurance, and extended term insurance, except as provided in § 8.29(b), shall become effective at the completion of the first policy year on any plan of National Service Life Insurance other than the 5-year level premium term plan; all values, reserves, and net single premiums being based on the American Experience Table of Mortality, with interest at the rate of 3 per centum per annum. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full, shall be the reserve together with any dividend accumulations. For each month after the first policy year for which month a premium has been paid or waived, the reserve at the end of the preceding policy year shall be increased by one-twelfth of the increase in reserve for the current policy year. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of the premiums for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery. The provisions of the "Net Cash Value" clause in National Service Life Insurance policies are hereby amended accordingly.

(b) *Cash value on insurance issued under the provisions of section 620 of the National Service Life Insurance Act, as amended, section 722(a) of Title 38, United States Code, and on modified life and ordinary life plans of such insurance issued under sections 704 (c) and (d), respectively, of such code.* Provisions for cash value, paid-up insurance, and extended term insurance, except as provided in § 8.29(b), shall become effective at the completion of the first policy year on any plan of National Service Life Insurance other than the 5-year level premium term plan; all values on such insurance, reserves, and net single premiums being based on the Commissioners 1941 Standard Ordinary Table of Mortality, with interest at the rate of 2¼ per centum per annum. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full, shall be the reserve. Values between policy years shall be proportionally adjusted. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of premiums for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery.

(c) *Cash value on insurance issued under the provisions of section 723(b) of Title 38, United States Code, and on modified life and ordinary life plans of such insurance issued under sections 704 (c) and (d), respectively, of such code.* Provisions for cash value, paid-up insurance, and extended term in-

surance, except as provided in § 8.29(b), shall become effective at the completion of the first policy year on any plan of National Service Life Insurance other than the limited convertible 5-year level premium term plan; all values on such insurance, reserves, and net single premiums being based on table X-18 (1950-54 Intercompany Table of Mortality) with interest at the rate of 2½ per centum per annum. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full, shall be the reserve. Values between policy years shall be proportionally adjusted. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of premiums for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery.

(d) *Cash value on nonparticipating insurance on which the requirements of good health were waived under the provisions of section 602(c)(2) of the National Service Life Insurance Act, as amended ("H" Insurance), and on the modified life and ordinary life plans of such "H" insurance issued under sections 704 (c) and (d), respectively, of Title 38, United States Code.* Provisions for cash value, paid-up insurance, and extended term insurance, except as provided in § 8.29(b), shall become effective at the completion of the first policy year on any plan of National Service Life Insurance other than the 5-year level premium term plan; all values, reserves, and net single premiums being based on the American Experience Table of Mortality, with interest at the rate of 3 per centum per annum. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full, shall be the reserve. Values between policy years shall be proportionally adjusted. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of the premiums for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery. The provisions of the "Net Cash Value" clause in National Service Life Insurance policies are hereby amended accordingly.

(e) *Cash value on participating modified life and ordinary life plan insurance issued under sections 704 (b) and (d), respectively, of Title 38, United States Code.* Provisions for cash value, paid-up insurance, and extended term insurance, except as provided in § 8.29(b), shall become effective at the completion of the first policy year on participating modified life and ordinary life plans of insurance issued under 38 U.S.C. 704 (b) and (d), respectively. All values on such insurance, reserves, and net single premiums shall be based on the 1958 Commissioners Standard Ordinary Basic Table of Mortality and interest at the rate of 3 per centum per annum. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full, shall be the reserve together with any dividend accumulations. Values between policy years shall be proportionally

adjusted. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of the premiums for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery.

(f) *Cash value on insurance issued under the provisions of section 725(b) of Title 38, United States Code, and on modified life and ordinary life plans of such insurance issued under sections 704 (c) and (d), respectively, of such code.* Provisions for cash value, paid-up insurance and extended term insurance shall become effective at the completion of the first policy year on any plan of insurance issued under 38 U.S.C. 725(b), or any modified life and ordinary life plans of such insurance issued under 38 U.S.C. 704 (c) and (d), respectively. All values on such insurance, reserves and net single premiums are based on the 1958 Commissioners Standard Ordinary Basic Mortality Table and interest at the rate of 3½ per centum per annum. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full, shall be the reserve. Values between policy years shall be proportionally adjusted. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of premiums for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery.

(g) *Cash value on insurance issued under the provisions of section 725(c) of Title 38, United States Code, and on modified life and ordinary life plans of such insurance issued under sections 704 (c) and (d), respectively, of such code.* Provisions for cash value, paid-up insurance and extended term insurance, shall become effective at the completion of the first policy year on any plan of insurance issued under 38 U.S.C. 725(c) or any modified life and ordinary life plans of such insurance issued under 38 U.S.C. 704 (c) and (d), respectively. All values on such insurance, reserves and net single premiums are based on the American Experience Table of Mortality and interest at the rate of 3½ per centum per annum. The cash value at the end of the first policy year and at the end of any policy year thereafter, for which premiums have been paid in full, shall be the reserve. Values between policy years shall be proportionally adjusted. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force by payment or waiver of premiums for at least 1 year. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the check for the cash value, whichever is later. If the application is forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery. If it is forwarded through military channels, the date the application is placed in military channels will be taken as the date of delivery.

[30 FR 3646, Mar. 19, 1965]

§ 8.27a Payment of the cash value of National Service Life Insurance in monthly installments under section 717(e) of Title 38, United States Code.

(a) Effective January 1, 1971, in lieu of payment of the cash surrender value in one sum under the provisions of § 8.27 (a) through (g) the insured may elect to receive payment in monthly installments under option 2 (§§ 8.79, 8.80, 8.80c, and 8.81, as applicable) or as a refund life income option in accordance with the applicable provisions of §§ 8.80, 8.80c, 8.81, and 8.92a. If the insured dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable as provided in § 8.89. Unless otherwise requested by the insured, a surrender under this section will be deemed completed as of the premium month in which the application for cash surrender is delivered to the Veterans Administration, or as of the date of the first check released thereunder, whichever is later.

(b) If the cash value of the policy is not sufficient to provide monthly installments under the option elected by the insured of at least $10, the amount payable shall be paid under option 2 in such maximum number of monthly installments as are a multiple of 12 and will provide a monthly installment of not less than $10 (see §§ 8.80a, 8.80b, 8.80d, and 8.81a).

(c) If the present value of the amount payable at the time the insured initially becomes entitled to payment thereof is not sufficient to pay at least 12 monthly installments of not less than $10 each, such amount shall be payable in one sum.

[36 FR 4384, Mar. 5, 1971]

§ 8.28 Policy loan: other than 5-year level premium term and limited convertible 5-year level premium term policies.

(a) At any time after the premiums for the first policy year have been paid and earned and before default is payment of any subsequent premium, and upon the execution of a loan agreement satisfactory to the Administrator, the United States will lend to the insured on the security of his National Service life insurance policy, on any plan other than 5-year level premium term or limited convertible 5-year level premium term, any amount which will not exceed 94 percent of the reserve, and any indebtedness on the policy shall be deducted from the amount advanced on such loan. Except as prescribed in paragraph(b) of this section, the loan shall bear interest at the rate of 5 per centum per annum, payable annually; and, at any time before default in the payment of the premium, the loan may be repaid in full or in amounts of $5 or more. Failure to pay either the amount of the loan or the interest thereon shall not void the policy unless the total indebtedness shall equal or exceed the cash value thereof. When the amount of the indebtedness equals or exceeds the cash value, the policy shall cease and become void.

(b) On and after August 1, 1946, the interest on all policy loans then outstanding or thereafter granted will be at the rate of 4 percent per annum.

(c) All loans applied for on and after January 11, 1971, will be granted at the interest rate of 5 per centum per annum.

[13 FR 7112, Nov. 27, 1948, as amended at 24 FR 17, Jan. 1, 1959; 24 FR 3592, May 5, 1959; 36 FR 368, Jan. 12, 1971]

EXTENDED TERM AND PAID-UP INSURANCE

§ 8.29 Provision for extended term insurance—other than 5-year level premium term or limited convertible 5-year level premium term policies.

(a) After the expiration of the first policy year and upon default in the payment of a premium within the grace period, if a permanent plan National Service Life Insurance policy other than the modified life plan has not been surrendered for cash or for paid-up insurance, the policy shall be extended automatically as term insurance. The extended term insurance shall be for an amount of the insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the cash value less any indebtedness and a charge for ad-

ministrative cost for insurance issued under 38 U.S.C. 725, will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the extended term insurance becomes effective. The extended term insurance shall not have a loan value, but shall have a cash value.

(b) Upon default in payment of a premium within the grace period on any permanent plan of National Service Life Insurance other than the modified life plan and any plan of insurance issued under 38 U.S.C. 725, if the policy has been in force by payment or waiver of premiums for not less than 3 months nor more than 11 months, the policy shall be extended automatically as term insurance. The extended term insurance shall be for an amount of insurance equal to the face value of the policy less any indebtedness for such time from the due date of the premium in default as the reserve of the policy less any indebtedness will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of months from that date to the date extended term insurance becomes effective. Extended term insurance under this provision shall not have a cash or loan value. This paragraph shall be effective from and after August 2, 1948.

(c) Upon default in payment of a premium within the grace period, if a modified life plan of National Service Life Insurance has not been surrendered for cash or paid-up insurance and if the policy has been in force by payment or waiver of premiums for not less than 3 months, or for not less than 1 year for insurance issued under 38 U.S.C. 725, the policy shall be extended automatically as of insurance equal to (1) the Initial Face Amount of Insurance (face amount of policy in force prior to insured's 65th birthday) less any indebtedness, for lapses which occur prior to the insured's 65th birthday, or (2) the Ultimate Face Amount of Insurance (face amount of policy in force on or after insured's 65th birthday) less any indebtedness, for lapses which occur on or after the insured's 65th birthday. If a modified life plan policy is on extended term insurance at the end of the day preceding the 65th birthday of the insured the amount of extended term insurance in effect under such policy shall be automatically reduced by one-half thereof. The extended term insurance shall be effective from the due date of the premium in default for such time as the cash value or the reserve, whichever is applicable, of the policy less any indebtedness and a charge for administrative cost for insurance issued under 38 U.S.C. 725, will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of months and years from that date to the date the extended term insurance becomes effective. If the policy lapsed prior to the end of the first policy year, the extended term insurance shall not have a cash or loan value. If the policy lapsed after the first policy year, the extended term insurance shall not have a loan value, but shall have a cash value.

[30 FR 3647, Mar. 19, 1965]

§ 8.30 Provision for paid-up insurance; other than 5-year level premium term or limited convertible 5-year level premium term policies.

If a National Service Life Insurance policy on any plan other than 5-year level premium term or limited convertible 5-year level premium term plan has not been surrendered for cash, upon written request of the insured and complete surrender of the insurance with all claims thereunder, after the expiration of the first policy year and while the policy is in force under premium-paying conditions, the United States will issue paid-up insurance for such amount as the cash value less any indebtedness, and a charge for administrative cost for insurance issued under 38 U.S.C. 725, will purchase when applied as a net single premium at the attained age of

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the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the paid-up insurance becomes effective. Such paid-up insurance will be effective as of the expiration of the period for which premiums have been paid and earned; and, any premiums paid in advance for months subsequent to that in which the application for paid-up insurance is made shall be refunded to the insured. The paid-up insurance, if eligible to participate in and to receive dividends as set forth in § 8.26(a), shall be with the right to dividends. The insured may at any time surrender the paid-up policy for its cash value or obtain a loan on such paid-up insurance.

[30 FR 3648, Mar. 19, 1965]

CHANGE IN PLAN

§ 8.32 Plans of National Service Life Insurance.

Subject to the conditions stated in §§ 8.33 and 8.34, National Service Life Insurance on the 5-year level premium term plan or limited convertible 5-year level premium term plan, may be converted to the following permanent plans of insurance: modified life, ordinary life, 20-payment life, 30-payment life, 20-year endowment, endowment at age 60, and endowment at age 65. Subject to the conditions stated in § 8.34a, National Service Life Insurance on the 5-year level premium term plan issued under section 621 of the National Service Life Insurance Act, as amended, may be exchanged for limited convertible 5-year level premium term insurance.

[30 FR 3648, Mar. 19, 1965]

§ 8.33 Conversion of a 5-year level premium term policy or limited convertible term policy as of a current effective date.

National Service Life Insurance on the level premium term plan which is in force may be exchanged, effective as of the date any premium becomes due within the term period, for insurance of the same amount, on any of the permanent plans specified in § 8.32, except that conversion to a modified life plan must be made before the insured attains the insurance age of 61 years and the effective date of the modified life plan must be before that date. The permanent plan insurance will be issued on the same reserve basis as the term insurance for which it was exchanged, except that:

(a) Participating term insurance exchanged for insurance on a modified life plan under 38 U.S.C. 704(b) shall be issued pursuant to § 8.112b(a);

(b) Term insurance issued under section 621 of the National Service Life Insurance Act, as amended, shall be exchanged for permanent plan insurance issued pursuant to § 8.112 (b) and (c), or for a modified life plan issued pursuant to § 8.112b(b); and

(c) All other nonparticipating term insurance exchanged for a modified life plan shall be issued pursuant to § 8.112b(b).

The insured will be required to file written application and pay (except where premium waiver under 38 U.S.C. 712 is effective) the current monthly premium at the attained age of the insured for the plan of insurance selected. Where premium waiver is effective under 38 U.S.C. 724, that portion of the current monthly premium at the attained age of the insured for the plan of insurance selected which is not required for the pure insurance risk must be paid. The reserve (if any) on the policy will be allowed as a credit on the current monthly premium except where premium waiver is effective. Conversion to an endowment plan may not be made while the insured is totally disabled. The exchange will be made without medical examination, except when deemed necessary to determine whether an applicant for conversion to an endowment plan is totally disabled, and upon complete surrender of the term insurance while in force by payment or waiver of premiums.

[30 FR 3648, Mar. 19, 1965]

§ 8.34 Conversion of a 5-year level premium term policy or limited convertible term policy as of a date prior to the current month.

National Service Life Insurance on the level premium term plan which is in force may be exchanged, effective as of the date any premium has become due within the term period, for insurance of the same amount, on any of the permanent plans specified in § 8.32 except that conversion to a modified life plan must be made before the insured attains the insurance age of 61 years and the effective date of the modified life plan must be before that date. The permanent plan insurance will be issued on the same reserve basis as the term insurance for which it was exchanged except that (a) participating term insurance exchanged for insurance on a modified life plan under 38 U.S.C. 704(b) shall be issued pursuant to § 8.112b(a); (b) term insurance issued under section 621 of the National Service Life Insurance Act, as amended, shall be exchanged for permanent plan insurance issued pursuant to § 8.112 (b) and (c), or for a modified life plan issued pursuant to § 8.112b(b); and (c) all other nonparticipating term insurance exchanged for a modified life plan shall be issued pursuant to § 8.112b(b). The insured will be required to file written application, pay the difference between the reserve on the new policy and the reserve on the old policy and pay (except where premium waiver under 38 U.S.C. 712 is effective) the current monthly premium at the attained age of the insured as of the effective date of the new policy. Where premium waiver is effective under 38 U.S.C. 724, the required reserve on the new policy must be paid together with that portion of the current monthly premium at the attained age of the insured as of the effective date of the new policy which is not required for pure insurance risk. Conversion to an endowment plan may not be made while the insured is totally disabled. The exchange will be made without medical examination, except when deemed necessary to determine whether an applicant for conversion to an endowment plan is totally disabled, and upon complete surrender of the term insurance while in force by payment or waiver of premiums. Waiver of the premiums on the new policy shall not be effective prior to the date such policy change was made.

[30 FR 3648, Mar. 19, 1965]

§ 8.34a Exchange of 5-year level premium term insurance issued under section 621 of the National Service Life Insurance Act, as amended, for limited convertible 5-year level premium term insurance as of a current effective date.

Effective January 1, 1959, 5-year level premium term insurance issued under section 621 of the National Service Life Insurance Act, as amended, which is in force may be exchanged for limited convertible 5-year level premium term insurance issued pursuant to § 8.112 (b) and (c): *Provided*, That after September 1, 1960, such exchange may not be made after the insured's fiftieth birthday. The exchange may be for insurance of the same amount and will be effective as of the last monthly premium due date prior to the date an acceptable application for exchange is mailed or otherwise delivered to the Veterans Administration except where such application is mailed or otherwise delivered on the premium due date, then in such case that date will be the effective date: *Provided*, That in no event shall the exchange be effective prior to the premium due date in January 1959. The insured will be required to file written application and pay the current monthly premium at his attained age for the limited convertible term insurance except where premium waiver under sections 602(n) or 622 of the National Service Life Insurance Act, as amended, or sections 712 or 724 of Title 38, United States Code, is effective. The reserve (if any) on the policy will be allowed as a credit for the payment of premiums, except where premium waiver is effective, and such reserve shall not be subject to withdrawal by the insured. The exchange will be made without medical examination and upon complete surrender, while in force by payment or waiver of premiums, of the insurance being exchanged.

[24 FR 18, Jan. 1, 1959]

§ 8.35 Exchange to a policy bearing the same effective date and having a higher reserve value.

If the insured be not totally disabled, National Service Life Insurance on any plan other than 5-year level premium term or limited convertible 5-year level premium term may be changed to insurance of the same amount, as of the same date, and based on the same age, on any plan of National Service Life Insurance, and except as hereinafter provided, on the same reserve basis having a higher reserve value, upon payment by the insured of the difference between the reserve on the new policy and the reserve on the old policy. If the insurance being exchanged was issued under 38 U.S.C. 725(c) the premium for the new policy will be calculated on the same basis as the premium for the old policy except for the difference due to the change of plan. Such exchange will be made without medical examination, except when deemed necessary to determine whether the insured be totally disabled, and upon complete surrender, while in force by payment of premiums, of the insurance being exchanged. Subject to the other conditions of this section, a participating modified life plan policy issued under 38 U.S.C. 704(b), and a participating ordinary life plan policy issued at age 65 under 38 U.S.C. 704(d), may be exchanged for a participating permanent plan policy with the premium rates, reserve, loan, paid-up and extended insurance values being based on the American Experience Table of Mortality and interest at the rate of 3 per centum per annum.

[30 FR 3649, Mar. 19, 1965]

§ 8.36 Exchange to a policy bearing the same effective date and having a lower reserve value.

National Service life insurance may be exchanged for insurance of the same amount, bearing the same date, and based on the same age, on any plan of National Service life insurance having a lower reserve value, except to the 5-year level premium term or limited convertible 5-year level premium term plan. Exchange of insurance to a modified life plan must be made before the insured attains the insurance age of 61 years. The policies exchanged will have the same reserve basis, except that a participating policy exchanged for a modified life plan shall be exchanged for insurance issued pursuant to § 8.112b(a). If the insurance being exchanged was issued under 38 U.S.C. 725(c) the premium for the new policy will be calculated on the same basis as the premium for the old policy except for the difference due to the change of plan. If the exchange is made within 1 year from the effective date or, in instances where less than 90 days of such year remain after the promulgation of this section (Aug. 1, 1969), within 90 days of such promulgation the applicant must be in as good health on the date of application as he was on the effective date. If the exchange is made after 1 year of the effective date, the applicant must be in good health and furnish satisfactory evidence of such. The old insurance must be in force under premium-paying conditions and must be surrendered with all rights and claims thereunder. The difference between the reserve on the old policy and the reserve on the new policy, less any indebtedness, may be used to cover payment of future premiums or withdrawn in cash at the option of the insured. If the old policy has been in force for less than 12 months, the difference in reserve may be used only for the purpose of paying future premiums on the insurance, and such premiums shall not be subject to withdrawal by the insured prior to the expiration of the first policy year.

[34 FR 12828, Aug. 7, 1969]

Premium Waivers and Total Disability

§ 8.40 Requirements for waiver of premiums under section 712 of Title 38, United States Code.

Upon written application by the insured, and except as provided in this section, payment of premiums may be waived during the continuous total disability of the insured which continues or has continued for six or more consecutive months, provided such disability commenced (a) subsequent to

date of application for insurance, (b) while the insurance was in force under premium-paying conditions, and (c) prior to the insured's 65th birthday. However, if the total disability of the insured commenced on or after the insured's 60th birthday but before his 65th birthday, no premiums shall be waived under this section which became due prior to January 1, 1965. The insured shall be required to furnish proof satisfactory to the Administrator showing continuous total disability for at least 6 consecutive months and may be denied benefits for failure to cooperate. In the event of death of the insured without filing application for waiver, such application may be filed by the beneficiary with evidence of the insured's right to waiver under the conditions of this section within 1 year after death of the insured; or, if the beneficiary be insane or a minor, such beneficiary may file application for waiver with evidence of the insured's right to waiver under the conditions of this section within 1 year after removal of such legal disability. This section shall not apply to any premium waiver authorized under section 602(d)(3) of the National Service Life Insurance Act, as amended. Waiver of premiums under this section shall not be denied on permanent plans of insurance issued or reinstated pursuant to 38 U.S.C. 781 because the total disability of the insured commenced prior to the date of his application for insurance or for reinstatement thereof; nor shall waiver of premiums under this section be denied on insurance issued under 38 U.S.C. 722(a) because the service-connected disability of the insured became total in degree prior to the effective date of such insurance. Waiver of premiums under this section shall not be denied on an ordinary life plan policy issued under 38 U.S.C. 704(d) because the total disability of the insured commenced prior to the effective date of such policy, provided premiums were being waived under this section on the modified life plan policy, which the ordinary life plan replaced, on the day before the insured's 65th birthday or such waiver of premiums is subsequently granted. Where an insured meets the requirements of this section, waiver of premiums hereunder on his National Service Life Insurance shall not be denied for the reason that premiums on such insurance are or have been waived under 38 U.S.C. 724.

[30 FR 3649, Mar. 19, 1965]

§ 8.41 Effective date of premium waiver.

(a) Upon written application of the insured, and except as hereafter provided in this paragraph, waiver of premiums may be granted effective as of the date 6 months continuous total disability commenced, but waiver in such cases shall not be effective as to any premium which became due more than 1 year prior to receipt of such application in the Veterans Administration. The Administrator may grant waiver of premiums in excess of such 1-year period in any case in which he finds that the insured's failure to submit timely application or satisfactory evidence to show the existence or continuance of total disability was due to circumstances beyond the insured's control. However, if the total disability of the insured commenced on or after the insured's 60th birthday but before his 65th birthday, no premiums shall be waived under this paragraph which became due prior to January 1, 1965. On permanent plans of National Service Life Insurance issued pursuant to 38 U.S.C. 781, and on insurance issued under 38 U.S.C. 722(a), waiver of premiums shall not be effective prior to the premium due date in the month in which application for insurance is made or the effective date of such insurance, whichever is the later date. On an ordinary life plan policy issued pursuant to 38 U.S.C. 704(d), waiver of premiums shall not be effective prior to the effective date of such insurance. On permanent plans of National Service Life Insurance reinstated pursuant to said section 781, waiver of premiums shall not be effective prior to the effective date of reinstatement of such insurance.

(b) Upon written application of the beneficiary as provided in § 8.40, and except as hereafter provided in this paragraph, waiver of premiums may be granted effective as of the date 6 months continuous total disability

commended, but waiver in such cases shall not be effective as to any premium which became due more than 1 year prior to the date of insured's death. The Administrator may grant waiver of premiums in excess of such 1-year period in any case in which he finds that the insured's failure to submit timely application or satisfactory evidence to show the existence or continuance of total disability was due to circumstances beyond the insured's control. However, if the total disability of the insured commenced on or after the insured's 60th birthday but before his 65th birthday, no premiums shall be waived under this paragraph which became due prior to January 1, 1965. On permanent plans of National Service Life Insurance issued pursuant to 38 U.S.C. 781 and on insurance issued under 38 U.S.C. 722(a), waiver of premiums shall not be effective prior to the premium due date in the month in which application for insurance is made or the effective date of such insurance, whichever is the later date. On an ordinary life plan policy issued pursuant to 38 U.S.C. 704(d), waiver of premiums shall not be effective prior to the effective date of such insurance. On permanent plans of National Service Life Insurance reinstated pursuant to said section 781, waiver of premiums shall not be effective prior to the effective date of reinstatement of such insurance.

(c) Premiums paid to cover a period during which the waiver is effective shall be refunded in cash, without interest, and, except as provided in § 8.7c(b), no part of such amount will be used to pay premiums unless specifically authorized in writing by the insured prior to lapse and then only to pay premiums falling due after such authorization.

[30 FR 3649, Mar. 19, 1965, as amended at 30 FR 8048, June 23, 1965]

§ 8.42 Discontinuance of premium waiver.

(a) The Administrator may require proof of continuance of total disability at any time he may deem same necessary. In the event it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding, and the insurance may be continued by payment of premiums, the due date of the first premium payable being the next regular monthly due date of the premium under the policy. The insurance shall not lapse prior to the date of expiration of the grace period allowed for the payment of such premium or prior to the expiration of 31 days after date of notice to the insured of the termination of the premium waiver, whichever is the later date. Such notice shall be sent by registered mail or by certified mail and sufficient notice will be deemed to have been given when such letter has been placed in the mails by the Veterans Administration: *Provided*, That the Administrator may grant an additional period of not more than 31 days for payment of the premiums in any case in which it is shown that the failure to make payment within 31 days after notice as defined in this paragraph was due to circumstances beyond the insured's control; but the premiums in any such case must be paid during the lifetime of the insured. The failure of the insured to furnish a correct current address at which mail will reach him promptly shall not be grounds for a further extension of time for payment of premiums under this section.

(b) In the event a finding that insured is no longer totally disabled is made at the same time a finding is made of total disability entitling the insured to a waiver of premiums while so disabled, the waiver of premiums shall cease as of the date on which total disability ceased and continuance of the insurance in such cases shall be subject to the timely payment of the premiums as they become or have become due and payable. The due date of the first premium payable subsequent to the date total disability ceased is the next regular due date of the premium under the policy, and if such premium was not paid within 31 days after the due date, the insurance lapsed.

(c) If the insured shall fail to cooperate with the Administrator in securing any evidence he may require to determine whether total disability has continued, the premium waiver shall cease effective as of the date finding is made of such failure to cooperate, and the insurance may be continued by

payment of the premiums within 31 days after notice of termination as provided in paragraph (a) of this section.

[13 FR 7114, Nov. 27, 1948, as amended at 25 FR 8776, Sept. 13, 1960]

§ 8.43 Total disability.

(a) Total disability as referred to in this section is any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation.

(b) Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the total loss of hearing of both ears, or the organic loss of speech shall be deemed to be total disability under National Service life insurance. Organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if such loss is caused by organic changes in such organs. Where such loss exists, the fact that some speech can be produced through the use of an artificial appliance or other organs of the body will be disregarded.

[16 FR 8365, Aug. 22, 1951, as amended at 24 FR 1416, Feb. 26, 1959]

MATURITY BY DEATH DURING TOTAL DISABILITY OF LESS THAN 6 MONTHS' DURATION

§ 8.44 Maturity by death during total disability of less than 6 months' duration.

If the sole reason that premiums cannot be waived under the provisions of section 712, Title 38 United States Code, is because of the death of the insured within 6 months after becoming totally disabled and proof of such facts, satisfactory to the Administrator, is filed by the beneficiary with the Veterans Administration within 1 year after the insured's death, the insurance shall be deemed to be in force at the date of his death. If the beneficiary be insane or a minor, the required proof may be filed within 1 year after the removal of such legal disability. The amount of unpaid premiums shall be a lien against and deducted from the proceeds of the insurance.

[29 FR 13074, Sept. 13, 1964]

BENEFICIARIES

§ 8.46 Beneficiary designations.

(a) The insured shall have the right to designate as beneficiary any person or persons, firm, corporation, or other legal entity (including the estate of the insured), individually or as trustee, for insurance maturing on or after August 1, 1946: *Provided*, That as to any insurance which matured prior to August 1, 1946, designated beneficiaries shall be restricted to persons within the permitted class of designated beneficiaries as follows: Wife (husband), child (including an adopted child, stepchild, illegitimate child), parent (including parent through adoption, stepparent, and persons who stood in loco parentis to the insured for a period of not less than 1 year prior to entry into active service), brother or sister (including those of the halfblood and through adoption) of the insured.

(b) A beneficiary designation shall be made by notice in writing to the Veterans' Administration, signed by the insured. A beneficiary designation, but not a change of beneficiary, may be made by last will and testament duly probated. A stepparent, stepchild, or illegitimate child cannot be paid insurance which matured prior to August 1, 1946, unless specifically designated as a beneficiary by the insured. A designation of beneficiary need not be made in the application for insurance but may be made at a later date.

[16 FR 9093, Sept. 7, 1951, as amended at 24 FR 7329, Sept. 11, 1959]

§ 8.47 Beneficiary changes.

The insured shall have the right at any time, and from time to time, and without the knowledge or consent of the beneficiary to cancel the beneficiary designation, or to change the beneficiary, but a change of beneficiary to a person not within the permitted class of beneficiaries set forth in § 8.46 shall not be effective as to insurance which matured prior to August 1, 1946. A change of beneficiary to be effective must be made by notice in writ-

ing signed by the insured and forwarded to the Veterans' Administration by the insured or his agent, and must contain sufficient information to identify the insured. Whenever practicable such notices shall be given on blanks prescribed by the Veterans' Administration. Upon receipt by the Veterans' Administration, a valid designation or change of beneficiary shall be deemed to be effective as of the date of execution: *Provided*, That any payment made before proper notice of designation or change of beneficiary has been received in the Veterans' Administration shall be deemed to have been properly made and to satisfy fully the obligations of the United States under such insurance policy to the extent of such payments.

[13 FR 7114, Nov. 27, 1948]

§ 8.18 Class and order of payment to other than designated beneficiary.

If no beneficiary was designated by the insured for insurance which matured prior to August 1, 1946, or if the designated beneficiary of such insurance did not survive the insured or dies or has died prior to completion of payment of the installments certain, the installments of insurance remaining unpaid shall be paid to persons in the permitted class of beneficiaries and in the order named:

(a) Widow (widower) of the insured.

(b) Child or children of the insured (including adopted children), in equal shares.

(c) Parent or parents who last bore such relationship to the insured (including parent through adoption and persons who stood in loco parentis to the insured for a period of not less than one year prior to entry into active service), in equal shares.

(d) Brothers and sisters of the insured (including those of the half blood and through adoption), in equal shares.

[13 FR 7114, Nov. 27, 1948, as amended at 16 FR 9093, Sept. 7, 1951; 24 FR 7329, Sept. 11, 1959]

SETTLEMENT WHERE INSURANCE MATURED PRIOR TO AUGUST 1, 1946

§ 8.19 Limitations on entitlement and payment.

(a) Any payment of insurance made to a person represented by the insured to be within the permitted class of beneficiaries shall be deemed to have been properly made and to satisfy fully the obligations of the United States under such insurance policy to the extent of such payments. The following provisions are applicable only to insurance which matured prior to August 1, 1946. No person shall have a vested right to any installment or installments of the insurance, and no installment of insurance shall be paid to the heirs, creditors, or legal representatives as such of the insured or of any beneficiary except as provided in § 8.60. If no person within the permitted class survives to receive the insurance or any part thereof, no payment of the unpaid installments shall be made, except that if the reserve of a converted policy, together with dividend accumulations, less any indebtedness under such policy, exceeds the amount paid to the beneficiaries, such excess shall be paid to the estate of the insured unless the estate of the insured would escheat under the laws of his place of residence, in which event no payment shall be made.

(b) When the amount of an individual monthly payment is less than $5, such amount may in the discretion of the Administrator, be allowed to accumulate without interest and be disbursed annually.

[24 FR 7329, Sept. 11, 1959]

§ 8.50 Payment to first beneficiary where insurance matured prior to August 1, 1946.

Upon due proof of the death of the insured prior to August 1, 1946, and while a National Service life insurance policy is in force, the monthly installments without interest, which have accrued since the death of the insured (the first installment being due on the date of the death of the insured), and the monthly installments which thereafter become payable in accordance with the provisions of the policy shall

be paid, as provided in § 8.75, to the beneficiary or beneficiaries entitled.

[24 FR 7329, Sept. 11, 1959]

§ 8.51 Payment after death of first beneficiary where insurance matured prior to August 1, 1946.

(a) Upon due proof of death of the first beneficiary after payment has been made of at least one installment of insurance which matured prior to August 1, 1946, thereafter monthly installments in the same amount shall be paid to the person or persons entitled as beneficiary until all of the installments certain shall have been paid.

(b) The foregoing provision, if payment of the insurance had originally commenced prior to September 30, 1944, is subject to the present beneficiary's right to change the mode of payment as provided in § 8.77(b).

[13 FR 7115, Nov. 27, 1948]

PROOF OF DEATH, AGE, OR RELATIONSHIP

§ 8.52 Proof of death, age, relationship and marriage.

Whenever it is necessary for a claimant to prove death, age, relationship or marriage, the provisions of §§ 3.1(j), 3.204, 3.205 (a) and (b), 3.209, 3.211, and 3.212 of this chapter will be followed.

[26 FR 1856, Mar. 3, 1961]

§ 8.54 Payment to decedent's estate.

If no legal representative has been or will be appointed National Service life insurance benefits, including dividends and premium refunds which are payable to the estate of a deceased insured or beneficiary, may be paid direct to the person or persons (distributee or distributees) entitled to the decedent's personal property under the laws of the State of his domicile if the amount payable does not exceed $5,000: *Provided, however,* That if under the law of decedent's domicile the claimant is unconditionally and directly entitled to an amount from decedent's estate independently of entitlement as a distributee, at least equal to the amount payable by Veterans Administration, payment, notwithstanding it exceeds $5,000, may be made directly to claimant.

[42 FR 6807, Feb. 4, 1977]

COLLECTION OF ANY INDEBTEDNESS

§ 8.55 Collection of any indebtedness.

At the maturity of a National Service life insurance policy by death, any indebtedness, unless paid off in cash, shall be liquidated by reducing the amount of each monthly installment in the proportion which the indebtedness bears to the face amount of the insurance. If the policy shall mature as an endowment, or be payable in one sum at death, any indebtedness shall be deducted from the amount payable under the policy.

[23 FR 7070, Sept. 12, 1958]

AGE

§ 8.56 Misstatement of age.

If the age of the insured under a National Service life insurance policy has been understated, the amount of the insurance payable under the policy shall be such exact amount as the premium paid would have purchased at the correct age; if overstated, the excess of premiums paid shall be refunded without interest. Guaranteed surrender and loan values will be modified accordingly. The age of the insured will be admitted by the Veterans Administration at any time upon satisfactory proof.

[13 FR 7115, Nov. 27, 1948]

ASSIGNMENTS

§ 8.59 Assignments.

(a) The proceeds of a National Service life insurance policy shall not be assignable except that the person designated as beneficiary may assign all or any part of his or her interest in the insurance to the insured's widow, widower, child, father, mother, grandfather, grandmother, brother, or sister: *Provided* the designated contingent beneficiary, if any, joins the beneficiary in the assignment and such assignment is delivered to the Veterans Administration before any payments of the insurance have been made to the beneficiary.

(b) Payment to the assignee shall be made in accordance with the option selected by the insured unless the insured selected option 3 or 4. In the latter event the assignee will be paid in such number of equal monthly installments under option 2, as most nearly conforms to the number of installments certain payable under the insured's election, or in 240 equal monthly installments, whichever is the lesser.

(c) The provisions of paragraphs (a) and (b) of this section are restricted to National Service life insurance policies which matured prior to July 27, 1962.

(d) The proceeds of a National Service life insurance policy shall not be assignable, except that any beneficiary to whom such insurance, maturing on or after July 27, 1962, is payable may assign all or any part of his interest in the insurance to the insured's widow, widower, child, father, mother, grandfather, grandmother, brother, or sister, when the designated contingent beneficiary, if any, joins the beneficiary in the assignment. Such joinder shall not be required in any case in which the insurance proceeds are payable to the assignor under option 1. No such assignment of a National Service life insurance policy shall be binding upon the United States unless in writing and until filed in the Veterans Administration. The United States assumes no responsibility for the validity of any assignment. Insurance granted under the provisions of section 722(b) of Title 38 United States Code, cannot be assigned.

(e) On insurance maturing on or after July 27, 1962, if an assignment is made by the principal beneficiary before any payment of the insurance has been made, payment to the assignee will be made in accordance with the option selected by the insured. If any payment of insurance to a beneficiary has been made, only the guaranteed unpaid installments certain may be assigned. However, if the principal beneficiary after payment under option 3 or 4 has commenced, assigns the remaining unpaid guaranteed installments certain and survives the period certain, such beneficiary shall be entitled to the resumption of the monthly installments payable for life in accordance with the monthly income option previously selected by such beneficiary.

[13 FR 7115, Nov. 27, 1948, as amended at 27 FR 10046, Oct. 12, 1962; 42 FR 6807, Feb. 4, 1977]

Taxation and Exemption

§ 8.60 Taxation and exemption.

(a) Payments of National Service life insurance as such are exempt from taxation, but such exemption does not extend to any property purchased in part or wholly out of such payments. Payments of insurance to a beneficiary under a National Service life insurance policy are exempt from claims of creditors, and are not liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

(b) The exemption shall apply against the United States or any agency thereof: *Provided*, That except as to dividends being held to the credit of the insured for the payment of premium under the provisions of Public Law 36, 82d Congress, or section 707 of Title 38, United States Code, the United States shall be entitled to collect by setoff or otherwise out of benefits, payable to any beneficiary under a National Service life insurance policy, the amount of any indebtedness due the United States by such beneficiary because of overpayments or illegal payments made to such beneficiary under laws administered by the Veterans Administration: *Provided further*, That in the settlement of any claim under a National Service life insurance policy, the United States shall be entitled to deduct the amount of unpaid premiums, or loans, or interest on such premiums or loans; or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits; or any other indebtedness existing under the particular insurance contract.

(c) Effective January 1, 1958, payments of insurance to a beneficiary under a National Service life insurance policy shall be subject to levy for taxes due the United States by such benefi-

ciary (sec. 3101(c) of Title 38, United States Code).

(72 Stat. 1229; 38 U.S.C. 3101)

[24 FR 7330, Sept. 11, 1959]

INSURANCE FORFEITURE

§ 8.61 Insurance forfeiture.

Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces of the United States or refuses to wear the uniform of such forces, shall forfeit all rights to insurance. No insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States; but the cash surrender value, if any, of such insurance on the date of death of the insured shall be paid to the designated beneficiary, if living, or otherwise to the beneficiary or beneficiaries within the permitted class in the order specified in section 716(b) of Title 38, United States Code.

[24 FR 7329, Sept. 11, 1959]

INCONTESTABILITY

§ 8.62 Incontestability.

Subject to the provisions of § 8.61, all National Service Life Insurance policies heretofore or hereafter issued, reinstated, or converted shall be incontestable from the date of issue, reinstatement, or conversion, except for fraud, nonpayment of premium, or on the ground that the applicant was not a member of the military or naval forces of the United States: *Provided*, That discharge or release of an insured from military or naval service for the reason of fraudulent enlistment shall not invalidate National Service Life Insurance issued on the basis of such service unless the Administrator determines that the insured was mentally or legally incapable of entering into a contract of enlistment. In such case the National Service Life Insurance so issued will be canceled as of the effective date of such insurance.

[17 FR 3162, Apr. 10, 1952]

§ 8.63 Refund of premiums in fraud cases.

Where National Service Life Insurance is canceled or voided for fraud and notice thereof is mailed after March 16, 1954, any premiums paid on such insurance for any period subsequent to 2 years after the date insurance was issued, reinstated, or converted because of such fraud shall be refunded without interest. On antedated policies the date of issue or conversion for the purpose of this section is the due date of the first full premium. The amount of any dividends, loan, or other insurance payment made as a result of the fraudulent issue, reinstatement, or conversion shall be deducted from such refund. The refund shall be made to the insured, if living, otherwise to the designated beneficiary; or, if no designated beneficiary survives, to the insured's estate.

[24 FR 7330, Sept. 11, 1959]

EXAMINATIONS

§ 8.64 Examination of applicants for insurance or reinstatement.

(a) Except as provided in paragraph (b) of this section where physical or mental examination is required of an applicant for National Service Life Insurance or of an applicant for reinstatement of National Service Life Insurance, such examination may be made by a medical officer of the United States Army, Navy, Air Force, or Public Health Service, or may be made free of charge to him by a full-time or part-time salaried physician at a regional office or hospital of the Veterans Administration. Such examination may also be made, at the applicant's own expense, by a physician duly licensed for the practice of medicine by a State, possession of the United States, Commonwealth of Puerto Rico, or the District of Columbia, or by a duly licensed osteopathic physician who is a graduate of a recognized and approved college of osteopathy and who is listed in the current directory of the American Osteopathic Association. Such examination may be made by a physician or osteopath who is not related to the applicant by blood or marriage, associated with him in business, or pecuniarily interested in

the insurance or reinstatement of the policy. Examinations made in a foreign country by a physician duly licensed for the practice of medicine and otherwise acceptable may be accepted if submitted through the American consul. The Administrator of Veterans Affairs may require such further medical examination or additional medical evidence as may be deemed necessary and proper to establish the physical and mental condition of the applicant at the time of the application.

(b) Where physical or mental examination is required of an applicant for issuance of National Service Life Insurance under 38 U.S.C. 725, or for the issuance of any total disability income provision to be attached thereto, such examination (including any supplemental examination or tests) shall be made at the applicant's own expense, by a physician duly licensed for the practice of medicine by a State, possession of the United States, Commonwealth of Puerto Rico, or the District of Columbia, or by a duly licensed osteopathic physician who is a graduate of a recognized and approved college of osteopathy and who is listed in the current directory of the American Osteopathic Association. Such examination must be made by a physician or osteopath who is not related to the applicant by blood or marriage, associated with him in business, or pecuniarily interested in the issuance of the policy or the total disability income provision. Examinations made in a foreign country by a physician duly licensed for the practice of medicine and otherwise acceptable may be accepted if submitted through the American consul. The Administrator of Veterans Affairs may require such further medical examination or additional medical evidence as may be deemed necessary and proper to establish the physical and mental condition of the applicant at the time of the application.

[30 FR 3650, Mar. 19, 1965]

§ 8.65 Examination in connection with total disability benefits.

Physical examination in connection with claim for total disability benefits may be made by a medical officer of the United States Army, Navy, Air Force, or Public Health Service, or may be made at Government expense by a full-time or part-time salaried physician at a regional office or hospital of the Veterans Administration. If an insured is unable to travel, because of physical or mental condition, the Manager of a regional office or Director of a hospital may, on his own initiative or at the request of the Insurance activity concerned, authorize at Government expense examination at the residence of the insured. The Administrator of Veterans Affairs may require such further medical examination or such additional medical evidence as may be deemed necessary and proper to establish the physical and mental condition of the insured.

[28 FR 1543, Feb. 19, 1963]

§ 8.66 Expenses incident to examinations for insurance purposes.

Except as provided in § 8.64(b), necessary transportation expenses incident to physical or mental examinations for insurance purposes at regional offices or hospitals shall be furnished when the insured is ordered to report for examination at the specific request of the insurance activity concerned, or the Manager of a regional office or Director of a hospital. Such expenses will be borne by the United States and will be paid from the applicable appropriation of the Department of Medicine and Surgery. Transportation, meal and lodging requests in connection with reporting to and returning from the place of examination may be furnished the applicant, or the applicant may travel at his own expense and claim reimbursement for such travel on a mileage basis, provided prior authority has been given for the travel. Travel incident to such an examination by salaried employees of the Veterans Administration will be in accordance with the Standardized Government Travel Regulations. If such an examination is made by a medical examiner on a fee basis, payment will be made at a fee not in excess of the schedule of fees in effect and approved by the Veterans Administration for medical and professional services in the State in which the ex-

amination is made. Where no approved State fee schedule is in effect or where a fee for the type of examination authorized is not listed in the approved State fee schedule in effect, such examinations will be furnished at a fee not in excess of that listed in the "Guide for Charges for Medical and Ancillary Services" of the Department of Medicine and Surgery in effect at the time the examination is authorized. If the particular examination is not covered by a schedule in effect and/or the said guide, a fee not in excess of what is reasonable and customarily charged in the community concerned may be allowed.

[30 FR 3650, Mar. 19, 1965]

Extra Hazards

§ 8.69 Definition of "disease or injury traceable to the extra hazards of the military or naval service."

A disease or injury may be found to be traceable to the extra hazards of the military or naval service when it appears from the evidence that the said disease or injury was in fact caused by, or is traceable to, the performance of duty in the active military, naval, or air service (as that term is defined in section 101 of Title 38, United States Code).

[24 FR 7330, Sept. 11, 1959]

Claims Alleging Insurance Contract Where There is No Application for Insurance on File

§ 8.70 Claims alleging insurance contract where there is no application for insurance on file.

In those cases where claim is made alleging that a person made valid application for National Service life insurance on file, the claimant will be reject to reinstatement or a waiver of payment of premiums is in order, or that the insurance matured by reason of the death of the insured at a time when the insurance was in force, and that there was a valid designation of beneficiary, and where there is no application for insurance on file, the claimant will be required to submit all available evidence concerning the alleged application for insurance in such manner and on such forms as may be deemed necessary. The evidence submitted by the claimant and the evidence as disclosed by records in possession of the Government relative to the question as to whether the person made a valid application for insurance will be considered and, if found sufficient to establish as a fact that the said person did apply for insurance and if the other allegations of said claim are sustained, a record of insurance will be established in accordance with such finding. However, if it be determined that the evidence is not sufficient to establish as a fact that the said person applied for insurance as alleged, or determined that any insurance applied for as alleged would not be valid or not subject to reinstatement, or determined that the said person did not die at a time when the insurance would have been in force if insurance had been applied for, or, in case of death, if it be determined that there was no valid designation of beneficiary, the claimant will be so informed. The claimant will be notified of his right to initiate an appeal by filing a notice of disagreement and the time limitation for filing such notice. Further, the claimant will be informed that unless he desires to initiate and perfect an appeal to the Board of Veterans Appeals, a disagreement exists as to the matters in controversy as contemplated by the provisions of 38 U.S.C. 784 as far as the Veterans Administration is concerned. The Director, Insurance Service, or Deputy Director for Underwriting, Accounts and Insurance Claims will make all original determinations as to whether a person made valid application for insurance as alleged. The determination as to the validity of beneficiary designations, in death cases, will be made by the claims activity in the office having jurisdiction over the insurance death claim.

[29 FR 1462, Jan. 29, 1964]

Parents, Brothers, and Sisters of Illegitimates

§ 8.71 Parents, brothers, and sisters of illegitimates.

If the insured was born an illegitimate and not legitimatized before his

death, the terms "parent," "father," "mother," "brother," and "sister" employed in the National Service Life Insurance Act, as amended, and the National Service life insurance provisions of Title 38, United States Code, shall include as to relationship by consanguinity:

(a) The mother.

(b) The father, only if he shall establish that he can meet "in loco parentis" requirements of the act.

(c)(1) Brothers or sisters, if children of the same mother.

(2) Brothers or sisters, if children of the same father and if it is shown to the satisfaction of the Administrator that the family relationship usual between brothers and sisters existed between them and the serviceman at the time he entered the service.

(Sec. 603, 54 Stat. 1012, as amended; 38 U.S.C.808)

[13 FR 7116, Nov. 27, 1948, as amended at 19 FR 6971, Oct. 29, 1954; 24 FR 7330, Sept. 11, 1959]

Optional Settlements

§ 8.75 Mode of payment where insurance matured prior to August 1, 1946.

National Service life insurance which matured prior to August 1, 1946, shall be payable in the following manner:

(a) If the first beneficiary is under 30 years of age at the time of the death of the insured, in 240 equal monthly installments at the rate of $5.51 per month for each $1,000 of insurance.

(b) If the beneficiary is 30 or more years of age at the time of death of the insured, in equal monthly installments for life, with 120 months certain (option 3, § 8.79).

(c) In lieu of the mode of payment shown in paragraphs (a) and (b) of this section, the insured or the first beneficiary may elect settlement as a refund life income (option 4, § 8.79).

[13 FR 7117, Nov. 27, 1948, as amended at 24 FR 7331, Sept. 11, 1959]

§ 8.76 Selection and revocation of option.

The insured under a National Service Life Insurance policy may, during his lifetime, make his selection of the optional settlement set forth in §§ 8.79, 8.80, 8.80c or 8.81, whichever is applicable. Such selection shall not be valid unless and until notice thereof is received in the Veterans Administration. The insured may select a different optional settlement for the contingent beneficiary from that selected for the principal beneficiary. However, if the principal beneficiary entitled to settlement in one sum survives the insured or if the principal beneficiary not entitled to settlement in one sum survives the insured and receives any payment, the option selected for the contingent beneficiary shall have no force or effect, except as provided below in this section. Where the insured has selected a lump-sum settlement for the contingent beneficiary, and the principal beneficiary, not entitled to settlement in one sum, dies after payment has commenced but before all installments certain have been paid, the present value of the remaining unpaid installments certain shall be paid to the contingent beneficiary in one sum, unless such contingent beneficiary elects to continue to receive the remaining unpaid installments certain as they become due and payable. The insured may, during his lifetime, revoke his selection of the optional settlement, but the revocation shall not be valid unless and until notice thereof is received in the Veterans Administration.

[30 FR 3650, Mar. 19, 1965]

§ 8.77 Election of optional settlement by beneficiary.

(a) *Insurance maturing on or after August 1, 1946, except insurance granted under section 722(b) of Title 38, United States Code.* (1) If the insured under a National Service life insurance policy has not selected one of the optional settlements and dies on or after August 1, 1946, the insurance shall be payable in 36 equal monthly installments, but the designated beneficiary may elect to receive settlement under option 2, 3, or 4. Such an election shall not be valid unless and until it is received in the Veterans Administration. If the insured has selected an optional settlement, then at the death of the insured the designated beneficiary may elect to receive payment in installments spread over a greater

period of time than that selected by the insured; thus:

(i) If the insured has selected option 1, the beneficiary may elect to receive payment under option 2, 3, or 4;

(ii) If the insured has selected option 2 with monthly installments not in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under option 2 or may elect to receive payment under option 3 or 4;

(iii) If the insured has selected option 2 with monthly installments in excess of 120, the beneficiary may elect to receive payment in a greater number of installments under option 2 or may elect to receive payment under option 4: *Provided*, The number of installments certain payable under option 4, are not less than the number selected by the insured;

(iv) If the insured has selected option 3, the beneficiary may elect to receive payment under option 4;

(v) If the insured has selected option 4 and named no contingent beneficiary, the beneficiary may elect to receive payment under option 3.

(2)(i) Where the insured has selected settlement under Option 1, a beneficiary who has elected to receive payment under Option 2, 3, or 4 may elect to receive the commuted value of any remaining unpaid installments certain: *Provided*, That where the commutation is elected under Option 3 or 4 after payment under such option has commenced, and the beneficiary survives the period certain, such beneficiary shall be entitled to the resumption of monthly installments payable for life in accordance with the monthly income option previously selected by such beneficiary. The entitlement to the resumption of monthly installments will be effective as of the monthly payment date next following the expiration of the period certain. Settlement under any one of the options or payment to the beneficiary of said commuted value under Option 2 or payment of said commuted value under Option 3 or 4 to the beneficiary who does not survive the period certain shall be in full and complete discharge of all liability under the contract.

(ii) A change in the mode of settlement may, within the limitations of paragraph (a)(1) of this section, be made by a beneficiary after payment has commenced provided the change is made within 1 year of original election and in those instances where Option 3 is changed to Option 1, 2, or 4; or Option 4 is changed to Option 1 or 2 satisfactory proof is submitted to establish that the beneficiary's state of health is the same as it was at time of original election. The effective date of the original election for this purpose will be the date it was delivered to the Veterans Administration. If such election was forwarded by mail, properly addressed to the Veterans Administration, the postmark date will be taken as the date of delivery. Such change will be made on the premise that the new election was made initially, and the account will be adjusted accordingly. A condition precedent to any such change will be the repayment of any amount received by the beneficiary in excess of that which would have been due had the new election been made initially.

(3) Options 3 and 4 shall not be available if the beneficiary be a firm, corporation, legal entity (including the estate of the insured), or trustee.

(4) Except as hereinafter indicated settlement under option 4 is not available to any beneficiary who is 69 or more years of age at the time of the death of the insured. Settlement under option 4 of insurance issued under section 620 or 621 of the National Service Life Insurance Act, as amended, or 38 U.S.C. 722(a), is not available if a male beneficiary is 78 or more years of age or if a female beneficiary is 80 or more years of age at the time of death of the insured. Settlement under option 4 of insurance issued under 38 U.S.C. 723(b), is not available if a male beneficiary is 77 or more years of age or if a female beneficiary is 79 or more years of age at the time of death of the insured. Settlement under option 4 of insurance issued under 38 U.S.C. 725 is not available if a male beneficiary is 74 or more years of age or if a female beneficiary is 77 or more years of age at the time of death of the insured.

(5) If the option selected by the insured or the designated beneficiary requires payment to any one beneficiary of monthly installments of less than $10, the amount payable to such beneficiary shall be paid under option 2 in such maximum number of monthly installments as are a multiple of 12 and will provide a monthly installment of not less than $10. (See §§ 8.80a, 8.80b, 8.80d and 8.81a.)

(6) If the present value of the amount payable at the time any person initially becomes entitled to such payment is not sufficient to provide at least 12 monthly installments of not less than $10 each, such amount shall be payable in one sum.

(b) *Insurance matured prior to August 1, 1946.* (1) If the insured under a National Service life insurance policy has not selected one of the optional settlements and died prior to August 1, 1946, payment will be made as provided in § 8.75, unless the first beneficiary elects settlement under option 4 (refund life income). If the insured selected settlement under the mode of payment provided in § 8.75, then at his or her death the beneficiary, if less than 69 years of age at the death of the insured, may elect to receive payment under option 4, but such an election shall not be valid unless and until it is received in the Veterans' Administration. If the insured selected option 4, payment will be made accordingly.

(2) Except as provided below in this subparagraph, a change in the mode of settlement is not authorized in any case in which payment has commenced, and settlement under any one of the options shall be in full and complete discharge of all liability under the contract: *Provided*, That where payments were commenced on or after September 30, 1944, but before the beneficiary was advised of the right of election, change in the mode of settlement may be effected if such beneficiary so elects within a reasonable period, ordinarily not more than 60 days, after notice has been sent regarding optional settlement: *Provided further*, That in any case in which payments were commenced prior to September 30, 1944, the beneficiary, whether or not the first beneficiary, may, within 2 years after August 1, 1946, elect a refund life income (option 4) payable in monthly installments adjusted as of the date of maturity of the insurance and based upon the age of the original payee at such maturity date, credit being allowed for payments made under the present mode of settlement.

[16 FR 12992, Dec. 27, 1951; 17 FR 2729, Mar. 28, 1952, as amended at 24 FR 582, Jan. 21, 1959; 24 FR 7231, Sept. 11, 1959; 30 FR 3650, Mar. 19, 1965; 32 FR 14275, Oct. 14, 1967; 45 FR 9732, Feb. 13, 1980]

§ 8.78 Values for optional settlements.

The values for optional settlements on National Service Life Insurance are based on an insurance of $1,000 without indebtedness. If there is an indebtedness under a National Service Life Insurance policy, the values will be decreased accordingly. If the policy provided for a smaller or larger amount of insurance than $1,000 the values will be decreased or increased proportionately.

[30 FR 3651, Mar. 19, 1965]

§ 8.79 Optional settlements on participating National Service Life Insurance and nonparticipating insurance issued under section 602(c)(2) of the National Service Life Insurance Act, as amended, on which the requirements of good health were waived.

The optional settlements under such a National Service Life Insurance policy maturing on or after August 1, 1946, are as follows:

Option 1; insurance payable in one sum. Settlement under this option will be made only when selected by the insured during his or her lifetime or by his or her last will and testament. When such selection has been made, the face amount (less any indebtedness) will be payable in one sum upon the death of the insured. (38 U.S.C. 717)

Option 2; insurance payable in elected installments. The installments noted below will be payable for an agreed number of months (not less than 36) to the designated beneficiary, but, if the designated beneficiary dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable.

OPTION 2

Number of monthly installments	Amount of each monthly installment
36	$28.99
48	22.06
60	17.91
72	15.14
84	13.16
96	11.68
108	10.53
120	9.61
132	8.86
144	8.24
156	7.71
168	7.26
180	6.87
192	6.58
204	6.23
216	5.96
228	5.73
240	5.51

Option 3: insurance payable in installments throughout life. The monthly installments noted below will be payable throughout the lifetime of the designated beneficiary; but, if such beneficiary dies before 120 of such installments have been paid, the remaining unpaid monthly installments will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable.

OPTION 3

Age of beneficiary at date of death of insured	Amount of each monthly installment per $1,000 of insurance payable to original beneficiary
10 and under	$3.45
11	3.46
12	3.48
13	3.50
14	3.52
15	3.54
16	3.56
17	3.58
18	3.60
19	3.63
20	3.65
21	3.68
22	3.70
23	3.73
24	3.76
25	3.79
26	3.83
27	3.86
28	3.90
29	3.93
30	3.97
31	4.01
32	4.06
33	4.10

OPTION 3—Continued

Age of beneficiary at date of death of insured	Amount of each monthly installment per $1,000 of insurance payable to original beneficiary
34	$4.15
35	4.20
36	4.26
37	4.31
38	4.37
39	4.43
40	4.50
41	4.57
42	4.64
43	4.72
44	4.80
45	4.89
46	4.98
47	5.08
48	5.18
49	5.28
50	5.39
51	5.51
52	5.63
53	5.76
54	5.90
55	6.03
56	6.18
57	6.33
58	6.49
59	6.65
60	6.81
61	6.98
62	7.15
63	7.32
64	7.50
65	7.67
66	7.84
67	8.02
68	8.19
69	8.35
70	8.51
71	8.66
72	8.80
73	8.94
74	9.06
75	9.18
76	9.28
77	9.37
78	9.44
79	9.50
80	9.55
81	9.58
82	9.60
83	9.61
84	9.61
85	9.61

Option 4: refund life income. The amount of the installments noted below will be payable monthly throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before payment of the number of installments certain noted below, the remaining unpaid monthly installments pay-

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able for such period certain as may be required in order that the sum of the installments certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of the contract less any indebtedness, will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable. The law does not authorize settlement under this option in any case in which less than 120 installments may be paid; if the beneficiary is 69 or more years of age at the time of the death of the insured, payment will be made as provided in option 3.

OPTION 4

[Beneficiaries of any age up to and including 68. Payable for life of first beneficiary with number of installments stated below guaranteed]

Age of beneficiary at date of death of insured	Number of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary
10 [1]	304	[1] $3.29
11	303	3.31
12	302	3.32
13	300	3.34
14	298	3.36
15	296	3.38
16	295	3.40
17	293	3.42
18	291	3.44
19	290	3.46
20	288	3.48
21	285	3.51
22	284	3.53
23	281	3.56
24	279	3.59
25	277	3.62
26	274	3.65
27	272	3.68
28	270	3.71
29	267	3.75
30	265	3.78
31	262	3.82
32	260	3.86
33	257	3.90
34	254	3.95
35	251	3.99
36	248	4.04
37	245	4.09
38	241	4.15
39	239	4.20
40	235	4.26
41	232	4.32
42	228	4.39
43	225	4.45
44	222	4.52
45	218	4.60
46	214	4.68
47	211	4.76
48	207	4.85
49	203	4.94
50	199	5.04
51	195	5.14
52	191	5.25

OPTION 4—Continued

[Beneficiaries of any age up to and including 68. Payable for life of first beneficiary with number of installments stated below guaranteed]

Age of beneficiary at date of death of insured	Number of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary
53	187	$5.36
54	183	5.48
55	179	5.60
56	175	5.73
57	171	5.87
58	166	6.03
59	162	6.18
60	158	6.34
61	154	6.52
62	150	6.69
63	145	6.90
64	141	7.10
65	137	7.32
66	133	7.55
67	129	7.79
68	124	8.07

[1] For age 10 and under, same monthly installment is paid.

[13 FR 7117, Nov. 27, 1948, as amended at 30 FR 3651, Mar. 19, 1965; 45 FR 9732, Feb. 13, 1980]

§ 8.80 Optional settlements on insurance issued under the provisions of section 620 or 621 of the National Service Life Insurance Act, as amended, and section 722(a) of Title 38, United States Code.

The optional settlements under a National Service life insurance policy issued under the provisions of section 620 or 621 of the National Service Life Insurance Act, as amended, and section 722(a) of Title 38, United States Code, are as follows:

Option 1; insurance payable in one sum. Settlement under this option will be made only when selected by the insured during his or her lifetime or by his or her last will and testament. When such election has been made, the face amount (less any indebtedness) will be payable in one sum upon the death of the insured. (38 U.S.C. 717)

Option 2; insurance payable in elected installments. The installments noted below will be payable for an agreed number of months (not less than 36) to the designated beneficiary, but, if the designated beneficiary dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable.

Number of monthly installments	Amount of each monthly installment
36	$28.69
48	21.75
60	17.59
72	14.82
84	12.84
96	11.36
108	10.21
120	9.29
132	8.53
144	7.91
156	7.38
168	6.92
180	6.53
192	6.18
204	5.88
216	5.61
228	5.37
240	5.16

Option 3; insurance payable in installments throughout life. The monthly installments noted below will be payable throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before 120 of such installments have been paid, the remaining unpaid monthly installments will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable.

Age of beneficiary at date of death of insured	Amount of each monthly installment per $1,000 of insurance payable to original beneficiary	
	Male	Female
10 and under	$2.49	$2.39
11	2.50	2.40
12	2.52	2.42
13	2.54	2.44
14	2.56	2.45
15	2.58	2.47
16	2.60	2.49
17	2.63	2.51
18	2.65	2.53
19	2.67	2.55
20	2.70	2.57
21	2.73	2.59
22	2.75	2.61
23	2.78	2.63
24	2.81	2.66
25	2.84	2.68
26	2.87	2.71
27	2.91	2.73
28	2.94	2.76
29	2.98	2.79
30	3.02	2.82
31	3.06	2.85
32	3.10	2.89
33	3.14	2.92
34	3.19	2.96
35	3.24	2.99
36	3.29	3.03
37	3.34	3.07
38	3.39	3.11
39	3.45	3.16
40	3.51	3.20
41	$3.57	$3.25
42	3.64	3.30
43	3.71	3.36
44	3.78	3.41
45	3.85	3.47
46	3.93	3.53
47	4.01	3.60
48	4.09	3.66
49	4.18	3.73
50	4.27	3.81
51	4.37	3.89
52	4.46	3.97
53	4.57	4.06
54	4.67	4.15
55	4.78	4.24
56	4.90	4.35
57	5.02	4.45
58	5.15	4.56
59	5.28	4.68
60	5.41	4.81
61	5.56	4.94
62	5.71	5.08
63	5.86	5.22
64	6.02	5.38
65	6.18	5.53
66	6.35	5.70
67	6.52	5.87
68	6.70	6.05
69	6.88	6.24
70	7.06	6.43
71	7.24	6.63
72	7.43	6.83
73	7.60	7.03
74	7.78	7.23
75	7.95	7.44
76	8.12	7.64
77	8.27	7.83
78	8.42	8.02
79	8.55	8.20
80	8.68	8.37
81	8.79	8.53
82	8.89	8.67
83	8.97	8.79
84	9.04	8.90
85	9.10	8.99
86	9.16	9.08
87	9.19	9.14
88	9.22	9.18
89	9.24	9.22
90	9.26	9.24
91	9.27	9.26
92	9.28	9.27
93	9.28	9.28
94	9.28	9.28
95	9.28	9.28
96 and over	9.29	9.29

Option 4; refund life income. The amount of the installments noted below will be payable monthly throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before payment of the number of installments certain noted below, the remaining unpaid monthly installments payable for such period certain as may be required in order that the sum of the install-

ments certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of the contract less any indebtedness, will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable. The law does not authorize settlement under this option in any case in whic less than 120 installments may be paid; if a male beneficiary is 78 or more years of age at the time of the death of the insured, payment will be made as provided in option 3; if a female beneficiary is 80 or more years of age at the time of the death of the insured, payment will be made as provided in option 3. (Beneficiaries of any age up to and including 77 for a male beneficiary and 79 for a female beneficiary: Payable for life of first beneficiary with number of installments stated below guaranteed).

Age of beneficiary at date of death of insured	Male beneficiary		Female beneficiary	
	No. of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary	No. of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary
10 and under	405	$2.47	421	$2.38
11	402	2.49	419	2.39
12	400	2.50	415	2.41
13	397	2.52	414	2.42
14	394	2.54	410	2.44
15	391	2.56	407	2.46
16	388	2.58	405	2.47
17	385	2.60	402	2.49
18	382	2.62	399	2.51
19	378	2.65	396	2.53
20	375	2.67	393	2.55
21	372	2.69	390	2.57
22	368	2.72	387	2.59
23	364	2.75	384	2.61
24	362	2.77	381	2.63
25	358	2.80	376	2.66
26	354	2.83	374	2.68
27	350	2.86	371	2.70
28	347	2.89	367	2.73
29	343	2.92	363	2.76
30	338	2.96	360	2.78
31	335	2.99	356	2.81
32	331	3.03	353	2.84
33	327	3.06	349	2.87
34	323	3.10	344	2.91
35	319	3.14	341	2.94
36	315	3.18	337	2.97
37	310	3.23	333	3.01
38	306	$3.27	328	$3.05
39	302	3.32	324	3.09
40	297	3.37	320	3.13
41	293	3.42	316	3.17
42	289	3.47	311	3.22
43	285	3.52	307	3.26
44	280	3.58	303	3.31
45	275	3.64	298	3.36
46	271	3.70	294	3.41
47	266	3.77	289	3.47
48	262	3.83	285	3.52
49	257	3.90	280	3.58
50	252	3.98	274	3.65
51	247	4.05	270	3.71
52	243	4.13	265	3.78
53	238	4.21	260	3.85
54	233	4.30	255	3.93
55	228	4.39	250	4.01
56	224	4.48	245	4.09
57	219	4.58	240	4.18
58	214	4.69	235	4.27
59	209	4.79	229	4.37
60	204	4.91	224	4.47
61	199	5.03	219	4.5
62	194	5.16	214	4.6
63	190	5.29	208	4.81
64	185	5.43	203	4.94
65	180	5.58	198	5.07
66	175	5.73	192	5.21
67	170	5.90	187	5.36
68	165	6.07	182	5.52
69	160	6.26	177	5.68
70	155	6.46	171	5.86
71	151	6.66	166	6.05
72	146	6.88	160	6.25
73	141	7.11	155	6.46
74	136	7.36	150	6.69
75	132	7.63	145	6.94
76	127	7.90	140	7.19
77	122	8.20	135	7.46
78		(1)	130	7.75
79			124	8.07
80				(1)

[1] For higher ages use installment given under option 3.

[16 FR 12993, Dec. 27, 1951, as amended at 24 FR 20, Jan. 1, 1959; 45 FR 9732, Feb. 13, 1980]

TABLES OF INSTALLMENTS WHEN OPTION SELECTED PROVIDES MONTHLY PAYMENTS OF LESS THAN $10

§ 8.80a Payment to a beneficiary where the monthly installment of participating National Service Life Insurance and nonparticipating insurance issued under section 602(c)(2) of the National Service Life Insurance Act, as amended, on which the requirements of good health were waived, is less than $10 under the option selected.

Where payment is to be made in 12 or 24 monthly installments (see § 8.77(a)(5)), the amount of each monthly installment will be paid in accordance with the following table:

Number of monthly installments	Amount of each monthly installment per $1,000 insurance payable
12	$84.47
24	42.86

[30 FR 3651, Mar. 19, 1965]

§ 8.80b Payment to a beneficiary where the monthly installment of insurance, issued under the provisions of section 620 or 621 of the National Service Life Insurance Act, as amended, or section 722(a) of Title 38, United States Code, is less than $10 under the option selected.

Where payment is to be made in 12 or 24 monthly installments (see § 8.77(a)(5)), the amount of each monthly installment will be paid in accordance with the following table:

Number of monthly installments	Amount of each monthly installment per $1,000 insurance payable
12	$84.19
24	42.56

[19 FR 3447, June 11, 1954, as amended at 24 FR 7331, Sept. 11, 1959]

§ 8.80c Optional settlements on insurance issued under the provisions of section 723(b) of Title 38, United States Code.

The optional settlements under a National Service life insurance policy issued under the provisions of section 723(b) of Title 38, United States Code, are as follows:

Option 1; insurance payable in one sum. Settlement under this option will be made only when selected by the insured during his or her lifetime or by his or her last will and testament. When such election has been made, the face amount (less any indebtedness) will be payable in one sum upon the death of the insured. (38 U.S.C. 717)

Option 2; insurance payable in elected installments. The installments noted below will be payable for an agreed number of months (not less than 36) to the designated beneficiary, but, if the designated beneficiary dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable.

OPTION 2

Number of monthly installments	Amount of each monthly installment
36	$28.79
48	21.86
60	17.70
72	14.93
84	12.95
96	11.47
108	10.32
120	9.39
132	8.64
144	8.02
156	7.49
168	7.03
180	6.64
192	6.30
204	6.00
216	5.73
228	5.49
240	5.27

Option 3; insurance payable in installments throughout life. The monthly installments noted below will be payable throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before 120 of such installments have been paid, the remaining unpaid monthly installments will be payable as provided in § 8.89, § 8.90, or § 8.91, whichever may be applicable.

Age of beneficiary at date of death of insured	Amount of each monthly installment per $1,000 insurance payable to original beneficiary	
	Male	Female
10 and under	$2.64	$2.54
11	2.66	2.56
12	2.67	2.57
13	2.69	2.59
14	2.71	2.61
15	2.73	2.62
16	2.75	2.64
17	2.78	2.66
18	2.80	2.68
19	2.82	2.70
20	2.85	2.72
21	2.87	2.74
22	2.90	2.76
23	2.93	2.78
24	2.96	2.80
25	2.99	2.83
26	3.02	2.85
27	3.05	2.88
28	3.09	2.91
29	3.12	2.94
30	3.16	2.97
31	3.20	3.00
32	3.24	3.03
33	3.28	3.06
34	3.33	3.10
35	3.38	3.14
36	3.43	3.17
37	3.48	3.21
38	3.53	3.26
39	3.59	3.30
40	3.65	3.35
41	3.71	3.39
42	3.78	3.44
43	3.85	3.50
44	3.92	3.55
45	3.99	3.61
46	4.07	3.67
47	4.15	3.74
48	4.23	3.80
49	4.32	3.87
50	4.41	3.95
51	4.51	4.03
52	4.61	4.11
53	4.71	4.19
54	4.81	4.29
55	4.93	4.38
56	5.04	4.48
57	5.16	4.59
58	5.29	4.70
59	5.42	4.82
60	5.56	4.95
61	5.70	5.08
62	5.85	5.22
63	6.00	5.36
64	6.16	5.52
65	6.32	5.68
66	6.49	5.84
67	6.66	6.02
68	6.84	6.20
69	7.02	6.38
70	7.20	6.58
71	7.38	6.77
72	$7.56	$6.97
73	7.74	7.18
74	7.91	7.38
75	8.08	7.58
76	8.25	7.78
77	8.40	7.98
78	8.55	8.17
79	8.68	8.34
80	8.80	8.51
81	8.91	8.66
82	9.01	8.80
83	9.09	8.92
84	9.16	9.03
85	9.22	9.12
86	9.26	9.19
87	9.30	9.25
88	9.33	9.29
89	9.35	9.33
90	9.37	9.35
91	9.38	9.37
92	9.38	9.38
93 and over	9.39	9.39

Option 4; refund life income. The amount of the installments noted below will be payable monthly throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before payment of the number of installments certain noted below, the remaining unpaid monthly installments payable for such period certain as may be required in order that the sum of the installments certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of the contract less any indebtedness, will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable. The law does not authorize settlement under this option in any case in which less than 120 installments may be paid; if a male beneficiary is 77 or more years of age at the time of the death of the insured, payment will be made as provided in option 3; if a female beneficiary is 79 or more years of age at the time of the death of the insured, payment will be made as provided in option 3.

OPTION 4

Beneficiaries of any age up to and including 76 for a male beneficiary and 78 for a female beneficiary: Payable for life of first beneficiary with number of installments stated below guaranteed.

Age of beneficiary at date of death of insured	Male beneficiary: Number of guaranteed monthly installments	Male beneficiary: Amount of each monthly installment per $1,000 insurance payable to original beneficiary	Female beneficiary: Number of guaranteed monthly installments	Female beneficiary: Amount of each monthly installment per $1,000 insurance payable to original beneficiary
10 and under	382	$2.62	396	$2.53
11	379	2.64	393	2.55
12	376	2.66	391	2.56
13	374	2.68	388	2.58
14	372	2.69	387	2.59
15	370	2.71	384	2.61
16	367	2.73	381	2.63
17	364	2.75	379	2.64
18	360	2.78	376	2.66
19	358	2.80	374	2.68
20	355	2.82	371	2.70
21	351	2.85	368	2.72
22	349	2.87	365	2.74
23	345	2.90	363	2.76
24	343	2.92	360	2.78
25	339	2.95	356	2.81
26	336	2.98	354	2.83
27	333	3.01	351	2.85
28	329	3.04	348	2.88
29	326	3.07	344	2.91
30	322	3.11	342	2.93
31	319	3.14	338	2.96
32	315	3.18	335	2.99
33	312	3.21	332	3.02
34	308	3.25	328	3.05
35	304	3.29	324	3.09
36	300	3.34	321	3.12
37	296	3.38	317	3.16
38	293	3.42	313	3.20
39	289	3.47	310	3.23
40	285	3.52	305	3.28
41	281	3.57	302	3.32
42	276	3.63	298	3.36
43	272	3.68	294	3.41
44	268	3.74	290	3.46
45	264	3.80	285	3.51
46	260	3.86	281	3.56
47	256	3.92	277	3.62
48	251	3.99	273	3.67
49	247	4.06	269	3.73
50	242	4.14	264	3.80
51	238	4.21	260	3.86
52	234	4.29	255	3.93
53	229	4.38	250	4.01
54	225	4.46	246	4.08
55	220	4.56	241	4.16
56	216	4.65	236	4.25
57	211	4.75	231	4.34
58	206	4.86	226	4.43
59	202	4.97	221	4.53
60	197	5.09	216	4.63
61	192	5.21	211	4.74
62	188	5.34	206	4.86
63	183	5.47	201	4.98
64	178	5.62	196	5.11
65	174	5.77	191	5.25
66	169	5.93	186	5.39
67	164	6.10	181	5.54
68	160	6.28	176	5.70
69	155	6.47	171	5.88
70	150	$6.67	166	$6.06
71	146	6.88	160	6.25
72	141	7.11	155	6.46
73	137	7.35	150	6.68
74	132	7.60	145	6.92
75	128	7.87	140	7.16
76	123	8.16	135	7.43
77	(1)	(1)	130	7.71
78	(1)	(1)	125	8.02
79	(1)	(1)	(1)	(1)

[1] For higher ages use installment given under Option 3.

[24 FR 20, Jan. 1, 1959, as amended at 45 FR 9732, Feb. 13, 1980]

§ 8.80d Payment to a beneficiary where the monthly installment of insurance, issued under the provisions of section 723(b) of title 38, United States Code, is less than $10 under the option selected.

Where payment is to be made in 12 or 24 monthly installments (see § 8.77(a)(5)), the amount of each monthly installment will be paid in accordance with the following table:

Number of monthly installments	Amount of each monthly installment per $1,000 insurance payable
12	$84.28
24	42.66

[36 FR 4384, Mar. 5, 1971]

§ 8.81 Optional settlements on insurance issued under the provisions of section 725 of Title 38, United States Code.

The optional settlements under a National Service Life Insurance policy issued under the provisions of 38 U.S.C. 725 are as follows:

Option 1; insurance payable in one sum. Settlement under this option will be made only when selected by the insured during his or her lifetime or by his or her last will

and testament. When such election has been made, the face amount (less any indebtedness) will be payable in one sum upon the death of the insured. (38 U.S.C. 717)

Option 2. *Insurance payable in elected installments.* The installments noted below will be payable for an agreed number of months (not less than 36) to the designated beneficiary, but, if the designated beneficiary dies before the agreed number of monthly installments have been paid, the remaining unpaid monthly installments will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable:

Number of monthly installments	Amount of each monthly installment
36	$29.19
48	22.27
60	18.12
72	15.35
84	13.38
96	11.90
108	10.75
120	9.83
132	9.09
144	8.46
156	7.94
168	7.49
180	7.10
192	6.76
204	6.47
216	6.20
228	5.97
240	5.75

Option 3. *Insurance payable in installments throughout life.* The monthly installments noted below will be payable throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before 120 of such installments have been paid, the remaining unpaid monthly installments will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable:

Age of beneficiary at date of death of insured	Amount of each monthly installment per $1,000 insurance payable to original beneficiary	
	Male	Female
10 and under	$3.28	$3.20
11	3.30	3.21
12	3.31	3.22
13	3.33	3.24
14	3.35	3.25
15	3.36	3.26
16	3.38	3.28
17	3.40	3.30
18	3.42	3.31
19	3.44	3.33
20	3.47	3.35
21	3.49	3.37
22	3.52	3.38
23	3.54	3.40
24	$3.57	$3.43
25	3.60	3.45
26	3.63	3.47
27	3.66	3.49
28	3.69	3.52
29	3.72	3.55
30	3.76	3.57
31	3.80	3.60
32	3.84	3.63
33	3.88	3.66
34	3.92	3.70
35	3.97	3.73
36	4.02	3.77
37	4.07	3.80
38	4.12	3.84
39	4.17	3.89
40	4.23	3.93
41	4.29	3.98
42	4.36	4.02
43	4.42	4.07
44	4.49	4.13
45	4.57	4.18
46	4.64	4.24
47	4.72	4.30
48	4.80	4.37
49	4.89	4.44
50	4.98	4.51
51	5.07	4.59
52	5.17	4.67
53	5.27	4.75
54	5.37	4.84
55	5.48	4.94
56	5.59	5.03
57	5.71	5.14
58	5.83	5.25
59	5.96	5.37
60	6.09	5.49
61	6.23	5.62
62	6.38	5.76
63	6.53	5.90
64	6.68	6.05
65	6.84	6.20
66	7.01	6.37
67	7.18	6.54
68	7.35	6.71
69	7.52	6.90
70	7.70	7.09
71	7.88	7.28
72	8.05	7.47
73	8.22	7.67
74	8.39	7.87
75	8.56	8.07
76	8.72	8.26
77	8.87	8.45
78	9.01	8.64
79	9.14	8.81
80	9.26	8.97
81	9.36	9.12
82	9.46	9.26
83	9.54	9.37
84	9.60	9.48
85	9.66	9.56
86	9.71	9.63
87	9.74	9.69
88	9.77	9.74
89	9.79	9.77
90	9.81	9.79
91	9.82	9.81

Age of beneficiary at date of death of insured	Amount of each monthly installment per $1,000 insurance payable to original beneficiary	
	Male	Female
92	$9.82	$9.82
93 and over	9.83	9.83

Option 4. *Refund life income.* The amount of the installments noted below will be payable monthly throughout the lifetime of the designated beneficiary, but, if such beneficiary dies before payment of the number of installments certain noted below, the remaining unpaid monthly installments payable for such period certain as may be required in order that the sum of the installments certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of the contract less any indebtedness, will be payable as provided in § 8.89, 8.90, or 8.91, whichever may be applicable. The law does not authorize settlement under this option in any case in which less than 120 installments may be paid; if a male beneficiary is 74 or more years of age at the time of the death of the insured, payment will be made as provided in option 3; if a female beneficiary is 77 or more years of age at the time of the death of the insured, payment will be made as provided in option 3.

Option 5. (Beneficiaries of any age up to and including 73 for a male beneficiary and 76 for a female beneficiary: Payable for life of first beneficiary with number of installments stated below guaranteed.)

Age of beneficiary at date of death of insured	Male beneficiary		Female beneficiary	
	Number of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary	Number of guaranteed monthly installments	Amount of each monthly installment per $1,000 insurance payable to original beneficiary
10 and under	306	$3.27	314	$3.19
11	305	3.28	313	3.20
12	304	3.30	312	3.21
13	302	3.32	310	3.23
14	301	3.33	309	3.24
15	299	3.35	308	3.25
16	297	3.37	306	3.27
17	295	3.39	305	3.28
18	294	3.41	304	3.30
19	292	3.43	302	3.32
20	290	3.45	301	3.33
21	289	3.47	299	3.35
22	287	3.49	297	3.37
23	285	3.52	295	3.39
24	283	$3.54	294	$3.41
25	281	3.57	292	3.43
26	278	3.60	290	3.45
27	276	3.63	288	3.48
28	274	3.66	286	3.50
29	272	3.69	285	3.52
30	269	3.72	282	3.55
31	266	3.76	280	3.58
32	264	3.79	278	3.60
33	262	3.83	276	3.63
34	259	3.87	274	3.66
35	256	3.91	271	3.70
36	254	3.95	269	3.73
37	251	3.99	266	3.76
38	248	4.04	264	3.80
39	245	4.09	261	3.84
40	242	4.14	258	3.88
41	239	4.19	256	3.92
42	236	4.24	253	3.96
43	233	4.30	250	4.01
44	230	4.36	247	4.06
45	227	4.42	244	4.11
46	224	4.48	241	4.16
47	220	4.55	237	4.22
48	217	4.62	234	4.28
49	214	4.69	231	4.34
50	210	4.77	228	4.40
51	207	4.85	224	4.47
52	203	4.93	221	4.54
53	200	5.02	217	4.61
54	196	5.11	214	4.69
55	192	5.21	210	4.77
56	189	5.31	206	4.86
57	185	5.41	203	4.95
58	182	5.52	199	5.05
59	178	5.64	195	5.15
60	174	5.76	191	5.26
61	170	5.89	186	5.38
62	166	6.03	182	5.50
63	163	6.17	178	5.62
64	159	6.32	174	5.76
65	155	6.48	170	5.90
66	151	6.65	166	6.05
67	147	6.83	161	6.22
68	143	7.02	157	6.39
69	139	7.22	153	6.57
70	135	7.44	148	6.76
71	131	7.66	144	6.97
72	127	7.90	140	7.19
73	123	8.16	135	7.42
74			131	7.67
75			127	7.93
76			122	8.22

1. For ages under 10, use age 10 value.
2. For male beneficiaries over age 73 and for females over age 76 use Option 3.

[30 FR 3651, Mar. 19, 1965, as amended at 45 FR 9732, Feb. 13, 1980]

§ 8.81a Payment to a beneficiary where the monthly installment of insurance, issued under 38 U.S.C. 725, is less than $10 under the option selected.

Where payment is to be made in 12 or 24 monthly installments (see § 8.77(a)(5)), the amount of each monthly installment will be paid in accordance with the following table:

Number of monthly installments	Amount of each monthly installment per $1,000 insurance payable
12	$84.65
24	43.05

[30 FR 3652, Mar. 19, 1965]

RENEWAL OF TERM INSURANCE

§ 8.85 Renewal of National Service life insurance on the 5-year level premium term plan and limited convertible 5-year level premium term plan.

(a) Effective July 23, 1953, except as provided in paragraph (c) of this section, all or any part of National Service life insurance on the 5-year level premium term plan or limited convertible 5-year level premium term plan, in any multiple of $500 and not less than $1,000, which is not lapsed at the expiration of any 5-year term period, shall be automatically renewed without application or medical examination for a successive 5-year period at the applicable level premium term rate for the then attained age of the insured: *Provided*, That in any case in which the insured is shown by satisfactory evidence to be totally disabled at the expiration of the term period of his insurance under conditions which would entitle him to continued insurance protection but for such expiration, such insurance, if subject to renewal under this paragraph, shall be automatically renewed for an additional period of 5 years at the premium rate for the then attained age. The renewal of insurance for any successive 5-year period will become effective as of the day following the expiration of the preceding term period, and the premium for such renewal will be at the applicable level premium term rate for the attained age of the policyholder on that day: *Provided further*, That no insurance is subject to renewal if the policyholder has exercised his optional right to change to another plan of insurance.

(b) Effective June 25, 1970, a 5-year level premium term policy which lapsed for nonpayment of the premium due and subsequently expired may be renewed subsequently to the expiration of the old term period provided the insured within 5 years of the date of lapse:

(1) Submits written application for reinstatement of the insurance.

(2) Tenders two monthly premiums, one for the month of lapse at the rate for the expired term and the other for the month of reinstatement at the rate for the new term.

(3)(i) If application for reinstatement is submitted and the premiums tendered within 6 premium months after lapse, including the premium month for which the unpaid premium was due, insurance will be reinstated provided the applicant be in as good health on the date of application and tender of premiums as he was on the last day of the grace period of the premium in default and furnishes satisfactory evidence thereof.

(ii) If application for reinstatement is submitted and the premiums tendered after expiration of the 6-month period mentioned in subdivision (i) of this subparagraph, insurance will be reinstated provided applicant is in good health (§ 8.1) on the date of application and tender of premiums and furnishes satisfactory evidence thereof.

(c) Limited convertible 5-year level premium term insurance issued under the provisions of 38 U.S.C. 723(b) may not be renewed after the insured's 50th birthday. However, in any case in which the insured under a limited convertible term policy is totally disabled at the expiration of the term period ending on or after his 50th birthday and, except for the provision prohibiting renewal, the insured would be entitled to continued protection and waiver of premiums under 38 U.S.C. 712, the term insurance, in the absence of instructions from the insured to the contrary, shall be automatically

converted in the same amount to an ordinary life policy. The ordinary life policy shall be issued on the same reserve basis as the limited convertible term insurance and will become effective as of the day following the expiration of the term period. The premiums for the ordinary life policy will be the applicable premium rate for the attained age of the insured on the effective date.

[21 FR 6544, Aug. 30, 1956, as amended at 24 FR 21, Jan. 1, 1959; 30 FR 3652, Mar. 19, 1965; 33 FR 365, Jan. 10, 1968; 36 FR 4384, Mar. 5, 1971]

SETTLEMENT OF INSURANCE MATURING ON OR AFTER AUGUST 1, 1946

§ 8.88 Payment to designated beneficiaries where insurance matures on or after August 1, 1946.

National Service life insurance maturing on or after August 1, 1946, is payable to the designated beneficiary in 36 monthly installments unless one of the optional settlements as provided in § 8.79, 8.80, 8.80c, or 8.81, whichever is applicable, has been selected by the insured or the designated beneficiary. The monthly installments, without interest, which have accrued since death of the insured (the first installment being due on the date of the death of the insured), and the monthly installments which thereafter are payable in accordance with the option selected, shall be paid to the designated beneficiary or beneficiaries.

[30 FR 3652, Mar. 19, 1965]

§ 8.89 Payment to estate of insured.

If no person is designated beneficiary by the insured, or if the designated beneficiary (including a contingent beneficiary) does not survive the insured, or if the designated beneficiary (including a contingent beneficiary) not entitled to a lump-sum settlement survives the insured and dies before payment has commenced, the face amount of insurance less any indebtedness shall be paid to the insured's estate in one sum: *Provided*, That in no event shall there be any payment to such estate of any sums which, if paid, would escheat. If the designated beneficiary (including the contingent beneficiary) not entitled to a lump-sum settlement survives the insured and dies after payment has commenced but before receiving all the benefits due and payable, the present value of the remaining unpaid installments certain shall be paid in one sum to the insured's estate: *Provided*, That in no event shall there be any payment to such estate of any sums which, if paid, would escheat. This provision shall not apply to any insurance which matured prior to August 1, 1946.

[13 FR 7119, Nov. 27, 1948]

§ 8.90 Payment to estate of beneficiary.

If the designated beneficiary of National Service life insurance maturing on or after August 1, 1946, is entitled to settlement in one sum but dies before receiving payment, or has elected payment in monthly installments under option 2, 3, or 4, and dies before receiving all of the installments due and payable thereunder, the present value of the remaining unpaid installments certain shall be payable to the estate of such beneficiary: *Provided*, That, in no event shall there be any payment to such estate of any sum which, if paid, would escheat.

[13 FR 7119, Nov. 27, 1948]

§ 8.91 Payment to contingent beneficiary.

(a) If the principal beneficiary of National Service life insurance maturing on or after August 1, 1946, not entitled to a lump-sum settlement survives the insured and dies after payment has commenced but before all installments certain have been paid, the remaining unpaid installments certain shall be paid to the surviving contingent beneficiary as they become due, unless the insured has selected a lump-sum settlement for the contingent beneficiary. In that event, the present value of the remaining unpaid installments certain shall be paid to the contingent beneficiary in one sum, unless such contingent beneficiary elects to continue to receive the remaining unpaid installments certain as they become due and payable.

(b) If the principal beneficiary of National Service life insurance matur-

ing on or after August 1, 1946, does not survive the insured or if the principal beneficiary not entitled to a lump-sum settlement survives the insured but dies before payment has commenced, the insurance shall be paid to the contingent beneficiary in accordance with the provisions of § 8.77.

[13 FR 7119, Nov. 27, 1948]

§ 8.92 Election of payments on matured endowments.

(a) The insured under a National Service Life Insurance policy issued on the endowment plan may, at the date of the maturity as an endowment, elect to receive payment in monthly installments under option 2 in lieu of payment in one sum or as a refund life income option as authorized under paragraph (b) of this section. He shall have the right to designate the beneficiary or beneficiaries to receive any remaining unpaid installments at his death. If the insured dies before receiving all such monthly installments and no designated beneficiary survives, the present value of the remaining unpaid installments shall be paid to the estate of the insured, provided such payment would not escheat. If the designated beneficiary of a matured endowment survives the insured, the present value of any remaining unpaid installments shall be paid to such beneficiary in one sum, unless the insured or such beneficiary has elected to continue the installments under the option selected by the insured for payment of the endowment.

(b) Effective January 1, 1971, under the provisions of 38 U.S.C. 717(e), the insured may elect to receive payment of such matured endowment policy, in lieu of any other mode of payment, as a refund life income in monthly installments payable for such periods certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the insured. However, all settlements under the refund life income option authorized by this paragraph shall be calculated on the basis of The Annuity Table for 1949. Installment payments under this paragraph shall be made as provided in §§ 8.80, 8.80c, 8.81, and 8.92a.

[36 FR 4384, Mar. 5, 1971]

§ 8.92a Optional settlement under the refund life income option authorized by 38 U.S.C. 717(e) on participating National Service Life Insurance and nonparticipating insurance issued under section 602(c)(2) of the National Service Life Insurance Act, as amended, on which the requirements of good health were waived.

(a) Where the insured requests settlement under the refund life income option of the proceeds of an endowment policy which matures by reason of completion of the endowment period, payment under this section shall be made as follows:

(1) *Refund Life Income Option Under 38 U.S.C. 717 (e).* The amount of the installments noted in this section will be payable monthly throughout the lifetime of the insured, but, if the insured dies before payment of the number of installments certain noted in this section, the remaining unpaid monthly installments will be payable as provided in § 8.92(a) for such period certain as may be required in order that the sum of installments certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of the contract less any indebtedness.

Age of insured at date of entitlement	Male		Female	
	Number of guaranteed installments	Amount of each monthly installment per $1,000	Number of guaranteed installments	Amount of each monthly installment per $1,000
40	262	$3.83	281	$3.57
41	258	3.88	277	3.62
42	255	3.93	274	3.66
43	251	3.99	270	3.71
44	247	4.05	266	3.76
45	244	4.11	263	3.81
46	240	4.17	260	3.86
47	236	4.24	256	3.91
48	233	4.31	252	3.97
49	229	4.38	249	4.03
50	225	4.45	244	4.10
51	221	4.53	240	4.17
52	217	4.61	236	4.24
53	213	4.70	233	4.31
54	209	4.79	228	4.39

Age of insured at date of entitlement	Male		Female	
	Number of guaranteed installments	Amount of each monthly installment per $1,000	Number of guaranteed installments	Amount of each monthly installment per $1,000
55	205	$4.88	224	$4.47
56	201	4.98	220	4.56
57	197	5.08	216	4.65
58	193	5.19	211	4.74
59	189	5.31	207	4.84
60	185	5.43	203	4.95
61	181	5.55	198	5.06
62	177	5.68	194	5.18
63	172	5.83	189	5.30
64	168	5.98	184	5.44
65	164	6.13	180	5.58
66	159	6.30	175	5.73
67	155	6.47	171	5.88
68	151	6.65	166	6.05
69	146	6.85	161	6.23
70	142	7.06	156	6.42
71	138	7.28	152	6.62
72	138	7.52	147	6.83
73	129	7.76	142	7.06
74	125	8.02	137	7.30
75	121	8.31	133	7.56
76	120	8.48	128	7.83
77	120	8.63	124	8.13
78	120	8.78	120	8.40
79	120	8.91	120	8.58
80	120	9.03	120	8.74
81	120	9.14	120	8.89
82	120	9.23	120	9.03
83	120	9.31	120	9.15
84	120	9.38	120	9.25
85	120	9.44	120	9.34
86	120	9.48	120	9.41
87	120	9.52	120	9.47
88	120	9.55	120	9.51
89	120	9.57	120	9.55
90	120	9.59	120	9.57
91	120	9.60	120	9.59
92	120	9.60	120	9.60
93 and over	120	9.61	120	9.61

[36 FR 4384, Mar. 5, 1971]

§ 8.92b Payment to the insured where the monthly installment of insurance under the provisions of section 717(e) of Title 38, United States Code, is less than $10 under the option selected.

(a) If the option selected by the insured requires payment of monthly installments of less than $10, the amount payable shall be paid under option 2 (§§ 8.79, 8.80, 8.80c, and 8.81, as applicable) in such maximum number of monthly installments as are a multiple of 12 and will provide a monthly installment of not less than $10.

(b) Where payment is to be made in 12 or 24 monthly installments, the amount of each monthly installment shall be paid in accordance with §§ 8.80a, 8.80b, 8.80d, and 8.81a, as applicable.

(c) If the present value of the amount payable at the time the insured initially becomes entitled to payment thereof is not sufficient to pay at least 12 monthly installments of not less than $10 each, such amount shall be payable in one sum.

[36 FR 4385, Mar. 5, 1971]

§ 8.93 Selection of optional settlements for minors and incompetents.

When an optional mode of settlement of National Service life insurance heretofore or hereafter matured is available to a beneficiary who is a minor or incompetent, such option may be exercised by his fiduciary, person qualified under section 14 of Title 25, United States Code, or person recognized by the Administrator as having custody of the person or the estate of such beneficiary, and the obligation of the United States under the insurance contract shall be fully satisfied by payment of benefits in accordance with the mode of settlement so selected.

[24 FR 7331, Sept. 11, 1959]

§ 8.94 Conditional designation of beneficiary.

If the insured by notice in writing to the Veterans' Administration during his lifetime has provided that a designated beneficiary shall be entitled to the proceeds of National Service life insurance only if such beneficiary shall survive him for such period (not more than 30 days), as specified by the insured, no right to the insurance shall vest as to such beneficiary during that period. In the event such beneficiary fails to survive the specified period, payment of the proceeds of National Service life insurance will be made as if the beneficiary had predeceased the insured.

[14 FR 7175, Nov. 29, 1949]

TOTAL DISABILITY INCOME PROVISIONS

§ 8.95 Authority for the total disability income provision for National Service life insurance.

The total disability income provision for National Service life insurance authorized by section 602(v) of the National Service Life Insurance Act, 1940, as amended, and section 715 of Title 38, United States Code, is subject in all respects to the applicable provisions of Title 38, United States Code, or any amendments thereto and all National Service life insurance regulations now in force or hereafter adopted, all of which together with the insured's application, evidence of good health, tender of premium, and the total disability income provision shall constitute the contract.

[24 FR 7331, Sept. 11, 1959]

§ 8.95a Withdrawal of the right to issue the total disability income provision (§ 8.98) authorized by section 602(v) of the National Service Life Insurance Act of 1940, as amended August 1, 1946.

Public Law 85-678, effective November 1, 1958, amended section 602(v) of the National Service Life Insurance Act of 1940 and terminated, as of October 31, 1958, the authority for issuing the total disability income provision incorporated in § 8.98 except for the right to reinstate such provision in accordance with the Veterans Administration regulations and except for the right to reinstate or replace such total disability income provision under § 8.96a(a) and (b). The total disability income provision (§ 8.98) which has been issued and made part of National Service life insurance policies will remain in effect in accordance with the provisions of § 8.98 unless surrendered pursuant to § 8.96(a).

[23 FR 8543, Nov. 1, 1958]

§ 8.95b Withdrawal of the right to issue the total disability income provision (§ 8.99) authorized by Public Law 85-678 and section 715 of Title 38, United States Code, in effect before January 1, 1965.

Public Law 88-355, effective January 1, 1965, amends section 715 of Title 38, United States Code, and terminated, as of December 31, 1964, the authority for issuing the total disability income provision incorporated in § 8.99, except for the right to reinstate such provision in accordance with Veterans Administration regulations. The total disability income provision (§ 8.99) which has been issued and made a part of National Service life insurance policies will remain in effect in accordance with the provisions of § 8.98 unless surrendered pursuant to § 8.96(a).

[29 FR 13810, Oct. 7, 1964]

§ 8.96 Application for total disability income provision and application for reinstatement thereof.

(a) Application for the total disability income provision authorized by section 715 of Title 38, United States Code, as amended by Public Law 88-355, effective January 1, 1965, must be made prior to the insured's fifty-fifth birthday except that prior to January 1, 1966, application may be made by the insured prior to his sixtieth birthday. The application and evidence of good health should be on such forms as may be prescribed by the Veterans Administration, but any statement in writing sufficient to identify the applicant and the amount of insurance applied for, together with evidence of good health satisfactory to the Administrator and a remittance to cover the first monthly premium will be sufficient as an application for the total disability income provision. Total disability insurance with benefits at the rate of $10 per month will be granted for each $1,000 of National Service Life Insurance in force in full multiples of $500, but not to exceed the amount of life insurance, other than extended insurance, in force under the policy at the time of the application, upon compliance with the requirements of this subparagraph. However, the total disability income provision authorized by 38 U.S.C. 715, as amended by Public Law 88-355, effective January 1, 1965, shall not be added to a National Service life insurance policy containing the total disability income provision issued under section 602(v) of the National Service Life Insurance Act, as amended, or the provisions of 38 U.S.C. 715, in effect before January

1, 1965, except (1) upon complete surrender of such total disability income provision with all claims thereunder (except as to rights which have matured for a period prior to the surrender); (2) written application signed by the applicant; (3) proof that the applicant is in good health, if required, satisfactory to the Administrator; and (4) payment of the premium determined by the Administrator to be required in such cases or submission of a signed agreement to pay the required premium or premiums when billed. No total disability income provision shall be included in insurance granted under the provisions of section 620 of the National Service Life Insurance Act, as amended, or section 722(a) of Title 38, United States Code.

(b) Except as provided in § 8.96, a total disability income provision which is lapsed may be reinstated if the insured meets the same requirements as those for reinstatement of the policy to which the total disability income provision is attached; except that in no event shall the requirement of a health statement or other medical evidence be waived in connection with the reinstatement of the total disability income provision.

[16 FR 12995, Dec. 27, 1951, as amended at 29 FR 13810, Oct. 7, 1964]

§ 8.96a Application for reinstatement and issue of the total disability income provision pursuant to section 623 of the National Service Life Insurance Act and section 781 of Title 38, United States Code.

(a) Any person having a National Service life insurance policy on a permanent plan with a total disability income provision attached who surrendered such insurance prior to January 1, 1957, pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951 at a time when the total disability income provision was in force, upon meeting the requirements for reinstatement of such insurance pursuant to the provisions of § 8.22(b) may at the same time reinstate the lapsed total disability income provision without medical examination upon: (1) Written application signed by any such person, (2) payment of the required reserve and (3) the full premium on the total disability income provision for the month in which application is made.

(b) Any person having a National Service life insurance policy on a permanent plan with a total disability income provision attached who surrendered such insurance prior to January 1, 1957, pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951 at a time when the total disability income provision was in force, upon meeting the requirements for issuance of National Service life insurance pursuant to the provisions of § 8.0(a)(1) may be issued at the same time a total disability income provision without medical examination upon written application signed by the applicant and payment of the required premium: *Provided*, That the total disability income provision issued pursuant to this paragraph shall be on the same terms and conditions and shall not be in excess of the total disability insurance which lapsed at the time the life insurance was surrendered prior to January 1, 1957, pursuant to section 5 of the Servicemen's Indemnity Act of 1951.

(c) If a total disability income provision was not in force at the time a permanent plan policy of National Service life insurance was surrendered prior to January 1, 1957, pursuant to section 5 of the Servicemen's Indemnity Act of 1951 or if an insured who surrendered a permanent plan policy of National Service life insurance prior to January 1, 1957, pursuant to section 5 of the Servicemen's Indemnity Act of 1951 at a time when the total disability income provision was in force fails to meet the requirements of paragraph (a) or (b) of this section within the time limitations specified for reinstatement or issue of the total disability income provision, the total disability income provision may, if the life insurance is in force under premium-paying conditions, be reinstated in accordance with the provisions of § 8.98, or the insured may be issued a total disability income provision upon compliance with the requirements of § 8.96(a).

(d) Where no total disability income provision was attached to National Service life insurance surrendered

prior to January 1, 1957, under the provisions of section 5 of the Servicemen's Indemnity Act of 1951, such provisions may be added to National Service life insurance issued or reinstated under § 8.0(a)(1) or § 8.22(b) upon compliance with the provisions of § 8.96(a).

[21 FR 10382, Dec. 28, 1956, as amended at 24 FR 7331, Sept. 11, 1959]

§ 8.96b Payment of total disability benefits on National Service life insurance issued or reinstated pursuant to section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code.

Payment under the total disability income provision (§ 8.98) attached to permanent plan insurance and issued or reinstated pursuant to section 5 of Public Law 23, 82d Congress, section 623 of the National Service Life Insurance Act, or section 781 of Title 38, United States Code, shall not be denied because the total disability of the applicant commenced prior to the date of his application for issuance or reinstatement of such provision. If the insured was totally disabled at the time of issuance or reinstatement of the total disability income provision and (a) such disability had existed for less than 6 consecutive months, payment will commence in accordance with the provisions of § 8.98, and (b) if such disability had existed for at least 6 consecutive months, payment will commence on the first monthly anniversary date of total disability on or subsequent to the effective date of the issue or reinstatement of such insurance but in no event more than 6 months prior to receipt of required proof: *Provided*, That on insurance issued or reinstated pursuant to section 623 of the National Service Life Insurance Act, while the applicant is in active service, payment of total disability income benefits shall not commence prior to the first monthly anniversary date of total disability on or after January 1, 1957.

[24 FR 7332, Sept. 11, 1959]

§ 8.97 Effective date of the total disability income provision authorized by section 715 of Title 38, United States Code, as amended by Public Law 88-355.

The total disability income provision will be made effective as follows:

(a) If the National Service life insurance policy and the total disability income provision are applied for at the same time and all requirements are complied with, the total disability income provision shall, except as provided in paragraph (b) of this section be effective as of the same date the policy became effective.

(b) If the National Service life insurance policy is dated back, or has been previously issued, and the application is made on other than a due date of the monthly premium on the policy and all requirements are compiled with, the total liability income provision shall be effective as of the last prior monthly premium due date.

(c) No protection shall be granted on the total disability income provision issued under 38 U.S.C. 715, as amended by Public Law 88-355 unless the total disability commenced on or after January 1, 1965, and subsequent to the date of application for such provision or the effective date thereof, whichever is later.

[13 FR 7120, Nov. 27, 1948, as amended at 29 FR 13810, Oct. 7, 1964]

§ 8.98 Total disability income provision for National Service life insurance, authorized by the National Service Life Insurance Act of 1940, as amended August 1, 1946.

The total disability income provision for National Service life insurance authorized by the National Service Life Insurance Act of 1940, as amended August 1, 1946, is as follows:

NATIONAL SERVICE LIFE INSURANCE

TOTAL DISABILITY INCOME PROVISION

Attached to and made a part of Policy No. ——— on the life of ————————, ——— age of insured.

Premiums:
Monthly ————————————
Quarterly ————————————
Semiannual ————————————
Annual————————————

If the insured becomes totally disabled before the anniversary of this policy nearest his sixtieth birthday and remains so disabled for at least six consecutive months, there will be paid to the insured, for as long as the total disability continues, a monthly income of $5 for each $1,000 of face amount of this policy, and the payment of the premiums for this provision (as well as for this policy) will be waived, subject to the following clauses (A) to (L):

(A) Total disability is defined as any one of the following:

(1) Any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation.

(2) The permanent loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye.

(3) The total loss of hearing of both ears, or

(4) The organic loss of speech.

(B) Total disability must be continuous and must exist for at least six consecutive months. It must have started:

(1) Before the anniversary of the policy nearest the insured's 60th birthday,

(2) After the date of application for this provision or the effective date hereof, whichever is later, and

(3) While this provision is in effect.

(C) The insured must file written application for total disability income benefits and must file the required proof that clauses (A) and (B) above have been fulfilled. The required proof must be filed while this provision is in force or within 1 year after this provision has ceased to be in effect. In the event the insured dies without filing application and the Administrator finds that the insured's failure to file such application was due to circumstances beyond the insured's control, the application and required proof may be filed by the beneficiary within 1 year after the date of death of the insured. In such cases, except for total disability which is due to one of the specific causes listed in (A)(2), (A)(3), and (A)(4) above, the monthly income payments may relate back to a date not exceeding 6 months prior to the date of death of the insured.

(D) The disability income payments will be paid from the first day of the seventh consecutive month of continuous total disability, except that if the total disability is not due to one of the specific causes listed in (A)(2), (A)(3), and (A)(4) above, the disability income payments will not relate back to a date more than 6 months prior to receipt at the Veterans Administration of the required proof, except as provided above in clause (C). Any disability income payments due the insured and not paid during his lifetime will be paid to the person entitled to the proceeds of this policy.

(E) Waiver of the payment of premiums for this provision (as well as for this policy) will be made effective with the first monthly premium due after the start of the continuous total disability, except that premiums due more than 1 year prior to receipt of claim will be waived only if the Administrator finds that the insured's failure to submit timely claim or satisfactory evidence of continuance of total disability was due to circumstances beyond the insured's control. Waiver of premiums will continue for as long as the total disability continues. Premiums paid to cover a period during which waiver of premiums is effective will be refunded without interest to the insured if living, otherwise to the person entitled to the proceeds of this policy.

(F) Notwithstanding the fact that proof of total disability may have been accepted as satisfactory, the Administrator may at any time require proof of continuance of total disability. If the insured fails to furnish evidence, satisfactory to the Administrator, of the continuance of such total disability, or if it appears to the Administrator that the insured is not totally disabled, no further total disability income payments will accrue and no further waiver of the payment of premiums will be granted. Thereafter, premiums on this policy (including this provision) will become due and payable as provided in the policy and in this provision.

(G) This provision will cease to be in effect, and no further premiums for it will be payable, on the anniversary of this policy nearest the insured's 60th birthday, or if this policy, or this provision lapses, or if this policy is surrendered for its net cash value, or for extended term insurance, or is surrendered for paid-up life insurance of less than $1,000, or if the policy matures as an endowment, or expires as term insurance.

(H) If this policy is surrendered for paid-up life insurance of not less than $1,000 face amount, this provision may be continued by the payment of the required premiums as they become due. In that event the face amount of this policy, for the purposes of this provision only, will be the largest multiple of $500 which does not exceed the amount of the paid-up life insurance.

(I) If this provision has lapsed, it may be reinstated provided the following requirements are met:

(1) A written application signed by the insured, and evidence of health satisfactory to the Administrator must be furnished.

(2) The required premiums and interest must be paid.

(J) If there is a change of plan under this policy which results in a larger premium for this provision, then in order to continue this provision there must be paid (1) the differences between premiums already paid for this provision and those that would have

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been paid for this provision had this policy been in force on the new plan when this provision originally became effective, and (2) interest on such differences at the rate of 3 percent a year compounded annually. To this extent the provision entitled "Change of plan" is modified.

(K) The benefits provided for in this provision will be in addition to all other benefits and privileges under this policy, including the participation in such dividends on this policy as may be determined by the Administrator. Disability income payments made under this provision will not reduce the face amount of this policy.

(L) This provision is granted in consideration of the application, evidence of good health, and payment of the monthly premium of $——— (in addition to the monthly premium stated on the face of this policy), and the payment thereafter of the same amount on each succeeding monthly premium due date of this policy. Premiums for this provision are payable until the anniversary of this policy nearest the insured's 60th birthday or until the end of the premium paying period of this policy, if earlier. If any premium for this provision is not paid before the end of the 31-day grace period, this provision will lapse as of the due date of that premium. Premiums for this provision may be paid quarterly, semiannually, or annually, in advance, but must be paid in the same manner as the premiums for this policy.

This provision takes effect on this ——— day of ———, 19—.

[S] ADMINISTRATOR OF VETERANS AFFAIRS.

Registrar ———.
VA Form 9-1667.

[19 FR 6338, Oct. 1, 1954, as amended at 29 FR 5003, Apr. 10, 1964]

§ 8.99 Total disability income provision for National Service Life Insurance authorized by Public Law 85-678 and section 715 of Title 38, United States Code, and issued prior to January 1, 1965.

The total disability income provision for National Service Life Insurance authorized by Public Law 85-678 and section 715 of title 38, United States Code, and issued prior to January 1, 1965, is as follows:

NATIONAL SERVICE LIFE INSURANCE

TOTAL DISABILITY INCOME PROVISION

Attached to and made a part of Policy No. ——— on the life of ———.

Premiums:
Monthly ————————————
Quarterly ————————————
Semiannual ————————————
Annual————————————

If the insured becomes totally disabled before his 60th birthday and remains so disabled for at least 6 consecutive months, there will be paid to the insured, for as long as the total disability continues, a monthly income of $10 for each $1,000 of face amount of this policy, and the payment of the premiums for this provision (as well as for this policy) will be waived, subject to the following clauses (A) to (L):

(A) Total disability is defined as any one of the following:

(1) Any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation.

(2) The permanent loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye,

(3) The total loss of hearing of both ears, or

(4) The organic loss of speech.

(B) Total disability must be continuous and must exist for at least 6 consecutive months. It must have started:

(1) Before the insured's 60th birthday,

(2) After the date of application for this provision or the effective date hereof, whichever is later, and

(3) While this provision is in effect.

(C) The insured must file written application for total disability income benefits and must file the required proof that clauses (A) and (B) above have been fulfilled. The required proof must be filed while this provision is in force or within 1 year after this provision has ceased to be in effect. In the event the insured dies without filing application and the Administrator finds that the insured's failure to file such application was due to circumstances beyond the insured's control, the application and required proof may be filed by the beneficiary within 1 year after the date of death of the insured. In such cases, except for total disability which is due to one of the specific causes listed in (A)(2), (A)(3), and (A)(4) above, the monthly income payments may relate back to a date not exceeding 6 months prior to the date of death of the insured.

(D) The disability income payments will be paid from the first day of the seventh consecutive month of continuous total disability, except that if the total disability is not due to one of the specific causes listed in (A)(2), (A)(3), and (A)(4) above, the disability income payments will not relate back to a date more than 6 months prior to receipt at the Veterans Administration of the required proof, except as provided above in clause (C). Any disability income payments due the insured and not paid during his life-

time will be paid to the person entitled to the proceeds of this policy.

(E) Waiver of the payment of premiums for this provision (as well as for this policy) will be made effective with the first monthly premium due after the start of the continuous total disability, except that premiums due more than 1 year prior to receipt of claim will be waived only if the Administrator finds that the insured's failure to submit timely claim or satisfactory evidence of continuance of total disability was due to circumstances beyond the insured's control. Waiver of premiums will continue for as long as the total disability continues. Premiums paid to cover a period during which waiver of premiums is effective will be refunded without interest to the insured if living, otherwise to the person entitled to the proceeds of this policy.

(F) Notwithstanding the fact that proof of total disability may have been accepted as satisfactory, the Administrator may at any time require proof of continuance of total disability. If the insured fails to furnish evidence satisfactory to the Administrator of the continuance of such total disability, or if it appears to the Administrator that the insured is not totally disabled, no further total disability income payments will accrue and no further waiver of the payment of premiums will be granted. Thereafter, premiums on this policy (including this provision) will become due and payable as provided in the policy and in this provision.

(G) This provision will cease to be in effect on the insured's 60th birthday, or if this policy or this provision lapses, or if this policy is surrendered for its net cash value, or for extended term insurance, or is surrendered for paid-up life insurance of less than $1,000, or if the policy matures as an endowment, or expires as term insurance.

(H) If this policy is surrendered for paid-up life insurance of not less than $1,000 face amount, this provision may be continued by the payment of the required premiums as they become due. In that event the face amount of this policy, for the purposes of this provision only, will be the largest multiple of $500 which does not exceed the amount of the paid-up life insurance.

(I) If this provision has lapsed, it may be reinstated provided the following requirements are met:

(1) A written application signed by the insured, and evidence of health satisfactory to the Administrator must be furnished.

(2) The required premiums and interest must be paid.

(J) If there is a change of plan under this policy which results in a larger premium for this provision, then in order to continue this provision there must be paid (1) the differences between the premiums already paid for this provision and those that would have been paid for this provision had this policy been in force on the new plan when this provision originally became effective, and (2) interest on such differences at the rate of 2½ percent a year compounded annually on insurance issued under section 723(b) of Title 38, United States Code, and on other National Service life insurance at the rate of 3 percent a year compounded annually. To this extent the provision entitled "Change of Plan" is modified.

(K) The benefits provided for in this provision will be in addition to all other benefits and privileges under this policy. If the policy to which this provision is attached is a participating policy, it may be separately classified for the purpose of dividend distribution from otherwise similar policies not containing such benefit. Disability income payments made under this provision will not reduce the face amount of this policy.

(L) This provision is granted in consideration of the application, evidence of good health, and payment of the monthly premium shown above (in addition to the monthly premium stated on the face of this policy), and the payment thereafter of the same amount on each succeeding monthly premium due date of this policy. Except as otherwise provided herein, premiums for this provision are payable to the insured's 60th birthday or until the end of the premium paying period of this policy, if earlier. If any premium for this provision is not paid before the end of the 31-day grace period, this provision will lapse as of the due date of that premium. Premiums for this provision may be paid quarterly, semiannually, or annually, in advance, but must be paid in the same manner as the premiums for this policy.

This provision takes effect on this ——— day of ————————, 19—.

[s] ADMINISTRATOR OF VETERANS AFFAIRS.

[23 FR 8543, Nov. 1, 1958, as amended at 23 FR 9181, Nov. 27, 1958; 29 FR 5003, Apr. 10, 1964; 30 FR 3652, Mar. 19, 1965]

§ 8.99a Total disability income provision for National Service life insurance authorized by section 715 of Title 38, United States Code, as amended by Public Law 88-355, effective January 1, 1965, other than insurance issued under 38 U.S.C. 725.

The total disability income provision for National Service life insurance authorized by 38 U.S.C. 715, as amended by Public Law 88-355, effective January 1, 1965, other than insurance issued under 38 U.S.C. 725 is as follows:

NATIONAL SERVICE LIFE INSURANCE

TOTAL DISABILITY INCOME PROVISION

Attached to and made a part of Policy No. ——— on the life of ————.

Premiums:
Monthly ————————————————
Quarterly ————————————————
Semiannual ————————————————
Annual————————————————

If the insured becomes totally disabled before his 65th birthday and remains so disabled for at least 6 consecutive months, there will be paid to the insured, for as long as the total disability continues, a monthly income of $10 for each $1,000 of face amount of this policy, and the payment of the premiums for this provision (as well as for this policy) will be waived, subject to the following clauses (A) to (L):

(A) Total disability is defined as any one of the following:

(1) Any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation;

(2) The permanent loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye;

(3) The total loss of hearing of both ears; or

(4) The organic loss of speech.

(B) Total disability must be continuous and must exist for at least 6 consecutive months. It must have started:

(1) Before the insured's 65th birthday;

(2) After the date of application for this provision or the effective date hereof; whichever is later, and

(3) While this provision is in effect.

(C) The insured must file written application for total disability income benefits and must file the required proof that clauses (A) and (B) above have been fulfilled. The required proof must be filed while this provision is in force or within 1 year after this provision has ceased to be in effect. In the event the insured dies without filing application and the Administrator finds that the insured's failure to file such application was due to circumstances beyond the insured's control, the application and required proof may be filed by the beneficiary within 1 year after the date of death of the insured. In such cases, except for total disability which is due to one of the specific causes listed in (A)(2), (A)(3), and (A)(4) above, the monthly income payments may relate back to a date not exceeding 6 months prior to the date of death of the insured.

(D) The disability income payments will be paid from the first day of the seventh consecutive month of continuous total disability, except that if the total disability is not due to one of the specific causes listed in (A)(2), (A)(3), and (A)(4) above, the disability income payments will not relate back to a date more than 6 months prior to receipt at the Veterans Administration of the required proof, except as provided above in clause (C). Any disability income payments due the insured and not paid during his lifetime will be paid to the person entitled to the proceeds of this policy.

(E) Waiver of the payment of premiums for this provision (as well as for this policy) will be made effective with the first monthly premium due after the start of the continuous total disability, except that premiums due more than 1 year prior to receipt of claim will be waived only if the Administrator finds that the insured's failure to submit timely claim or satisfactory evidence of continuance of total disability was due to circumstances beyond the insured's control. Waiver of premiums will continue for as long as the total disability continues. Premiums paid to cover a period during which waiver of premiums is effective will be refunded without interest to the insured if living, otherwise to the person entitled to the proceeds of this policy.

(F) Notwithstanding the fact that proof of total disability may have been accepted as satisfactory, the Administrator may at any time require proof of continuance of total disability. If the insured fails to furnish evidence satisfactory to the Administrator of the continuance of such total disability, or if it appears to the Administrator that the insured is not totally disabled, no further total disability income payments will accrue and no further waiver of the payment of premiums will be granted. Thereafter, premiums on this policy (including this provision) will become due and payable as provided in the policy and in this provision.

(G) This provision will cease to be in effect on the insured's 65th birthday, or if this policy or this provision lapses, or if this policy is surrendered for its net cash value, or for extended term insurance, or is surrendered for paid-up life insurance of less than $1,000, or if the policy matures as an endowment, or expires as term insurance.

(H) If this policy is surrendered for paid-up life insurance of not less than $1,000 face amount, this provision may be continued by the payment of the required premiums as they become due. In that event the face amount of this policy, for the purposes of this provision only, will be the largest multiple of $500 which does not exceed the amount of the paid-up life insurance.

(I) If this provision has lapsed, it may be reinstated provided the following requirements are met:

(1) A written application signed by the insured, and evidence of health satisfactory to the Administrator must be furnished.

(2) The required premiums and interest must be paid.

(J) If there is a change of plan under this policy which results in a larger premium for this provision, then in order to continue this provision there must also be paid (1) the differences between the premiums already paid for this provision and those that would have been paid for this provision had this policy been in force on the new plan when this provision originally became effective, and (2) interest on such differences at the rate of 2½ percent a year compounded annually on insurance issued under section 723(b) of Title 38, United States Code, and on other National Service life insurance at the rate of 3 percent a year compounded annually. To this extent the provision entitled "Change of Plan" is modified.

(K) The benefits provided for in this provision will be in addition to all other benefits and privileges under this policy. If the policy to which this provision is attached is a participating policy, it may be separately classified for the purpose of dividend distribution from otherwise similar policies not containing such benefit. Disability income payments made under this provision will not reduce the face amount of this policy.

(L) This provision is granted in consideration of the application, evidence of good health, and payment of the monthly premium shown above (in addition to the monthly premium stated on the face of this policy), and, except as otherwise provided herein, the payment thereafter of the same amount on each succeeding monthly premium due date of this policy to the insured's 65th birthday, or until the end of the premium-paying period of this policy, if earlier. If any premium for this provision is not paid before the end of the 31-day grace period, this provision will lapse as of the due date of that premium. Premiums for this provision may also be paid quarterly, semiannually, or annually, in advance, but, except as otherwise provided herein, must be paid in the same manner as the premiums for this policy. If the policy to which this provision is attached is a twenty or thirty payment life policy which is fully paid-up or will be fully paid-up before the insured's 65th birthday and if the insured elected to pay premiums on this provision to his 65th birthday, then the premium payment conditions of this provision and of this policy are modified accordingly. If this provision is attached to a term policy the premium for this provision is subject to increase at each renewal of the term policy.

This provision takes effect on this ———day of ——— 19——.

[s] ADMINISTRATOR OF VETERANS AFFAIRS.

[29 FR 13810, Oct. 7, 1964, as amended at 30 FR 3652, Mar. 19, 1965]

§ 8.99b Total disability income provision authorized by section 715 of Title 38, United States Code, for National Service Life Insurance issued under section 725 of the code.

The total disability income provision authorized by 38 U.S.C. 715 for National Service life insurance policies issued under 38 U.S.C. 725, is as follows:

NATIONAL SERVICE LIFE INSURANCE

TOTAL DISABILITY INCOME PROVISION

Attached to and made a part of Policy No. ——— on the life of ———.

Premiums:
Monthly ———————————
Quarterly ———————————
Semiannual ———————————
Annual———————————

The premiums for this provision may be adjusted to cover the administrative costs of the insurance to the Government in the same manner as that set forth in the policy to which the provision is attached.

If the insured becomes totally disabled before his 65th birthday and remains so disabled for at least 6 consecutive months, there will be paid to the insured, for as long as the total disability continues, a monthly income of $10 for each $1,000 of face amount of this policy, and the payment of the premiums for this provision (as well as for this policy) will be waived, subject to the following clauses (A) to (L):

(A) Total disability is defined as any one of the following:

(1) Any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation;

(2) The permanent loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye;

(3) The total loss of hearing of both ears; or

(4) The organic loss of speech.

(B) Total disability must be continuous and must exist for at least 6 consecutive months. It must have started:

(1) Before the insured's 65th birthday;

(2) After the date of application for this provision or the effective date hereof; whichever is later; and

(3) While this provision is in effect.

(C) The insured must file written application for total disability income benefits and must file the required proof that clauses (A) and (B) above have been fulfilled. The required proof must be filed while this provision is in force or within 1 year after this

provision has ceased to be in effect. In the event the insured dies without filing application and the Administrator finds that the insured's failure to file such application was due to circumstances beyond the insured's control, the application and required proof may be filed by the beneficiary within 1 year after the date of death of the insured. In such cases, except for total disability which is due to one of the specific causes listed in (A)(2), (A)(3), and (A)(4) above, the monthly income payments may relate back to a date not exceeding 6 months prior to the date of death of the insured.

(D) The disability income payments will be paid from the first day of the seventh consecutive month of continuous total disability, except that if the total disability is not due to one of the specific causes listed in (A)(2), (A)(3), and (A)(4) above, the disability income payments will not relate back to a date more than 6 months prior to receipt at the Veterans Administration of the required proof, except as provided above in clause (C). Any disability income payments due the insured and not paid during his lifetime will be paid to the person entitled to the proceeds of this policy.

(E) Waiver of the payment of premiums for this provision (as well as for this policy) will be made effective with the first monthly premium due after the start of the continuous total disability, except that premiums due more than 1 year prior to receipt of claim will be waived only if the Administrator finds that the insured's failure to submit timely claim or satisfactory evidence of continuance of total disability was due to circumstances beyond the insured's control. Waiver of premiums will continue for as long as the total disability continues. Premiums paid to cover a period during which waiver of premiums is effective will be refunded without interest to the insured if living, otherwise to the person entitled to the proceeds of this policy.

(F) Notwithstanding the fact that proof of total disability may have been accepted as satisfactory, the Administrator may at any time require proof of continuance of total disability. If the insured fails to furnish evidence satisfactory to the Administrator of the continuance of such total disability, or if it appears to the Administrator that the insured is not totally disabled, no further total disability income payments will accrue and no further waiver of the payment of premiums will be granted. Thereafter, premiums on this policy (including this provision) will become due and payable as provided in the policy and in this provision.

(G) This provision will cease to be in effect on the insured's 65th birthday, or if this policy or this provision lapses, or if this policy is surrendered for its net cash value, or for extended term insurance, or is surrendered for paid-up life insurance of less than $1,000, or if the policy matures as an endowment.

(H) If this policy is surrendered for paid-up life insurance of not less than $1,000 face amount, this provision may be continued by the payment of the required premiums as they become due. In that event the face amount of this policy, for the purposes of this provision only, will be the largest multiple of $500 which does not exceed the amount of the paid-up life insurance.

(I) If this provision has lapsed, it may be reinstated within 5 years from the date of lapse, but not thereafter, provided the following requirements are met:

(1) A written application signed by the insured, and evidence of health satisfactory to the Administrator must be furnished.

(2) The required premiums and interest must be paid.

(J) If there is a change of plan under this policy which results in a larger premium for this provision, then in order to continue this provision there must also be paid (1) the differences between the premiums already paid for this provision and those that would have been paid for this provision had this policy been in force on the new plan when this provision originally became effective, and (2) interest on such differences at the rate of 3½ percent a year compounded annually. To this extent the provision entitled "Change of Plan" is modified.

(K) The benefits provided for in this provision will be in addition to all other benefits and privileges under this policy. Disability income payments made under this provision will not reduce the face amount of this policy.

(L) This provision is granted in consideration of the application, evidence of good health, and payment of the monthly premium shown above (in addition to the monthly premium stated on the face of this policy), as well as any adjustments of such premiums, and the payment thereafter of the required premium on each succeeding monthly premium due date of this policy. Except as otherwise provided herein, premiums for this provision are payable to the insured's 65th birthday or until the end of the premium-paying period of this policy, if earlier. If any premium for this provision is not paid before the end of the 31-day grace period, this provision will lapse as of the due date of that premium. Premiums for this provision may be paid quarterly, semiannually, or annually, in advance, but must be paid in the same manner as the premiums for this policy.

This provision takes effect on this ——— day of ————————, 19—.

[s] ADMINISTRATOR OF VETERANS AFFAIRS.

[30 FR 3652, Mar. 19, 1965]

§ 8.99c Premium rates for the total disability income provision authorized by section 715 of Title 38, United States Code, as amended by Public Law 88-355.

The premium rates for the total disability income provision authorized by section 715 of title 38, United States Code, as amended by Public Law 88-355, are published in Veterans Administration Pamphlet 29-13 and Veterans Administration Pamphlet 29-13A. If the total disability income provision is attached to a policy of insurance issued under 38 U.S.C. 725, or to a modified life plan of such insurance issued under 38 U.S.C. 704(c), the premium for the provision may be adjusted to cover administrative cost to the Government of the insurance as set forth in the policy.

[30 FR 3653, Mar. 19, 1965]

Insurance Provided by Special Legislation

§ 8.100 Insurance benefits authorized under section 602(c)(3) of the act, as amended August 1, 1946.

(a) Any person in the active service between October 8, 1940, and September 2, 1945, both dates inclusive, who, while in such service and while performing full military or naval duty, made written application for insurance which was denied solely because of his condition of health, and who thereafter during such period of active service shall have incurred a total and permanent disability in line of duty or died in line of duty, shall be deemed to have applied for and to have been granted insurance for such amount which, when added to any other insurance in force under the War Risk Insurance Act, as amended, the World War Veterans' Act, 1924, as amended, or the National Service Life Insurance Act of 1940, as amended, shall not in the aggregate exceed $10,000.

(b) Total permanent disability as referred to herein is any impairment of mind or body, which had continuously rendered it impossible for the disabled person to follow any substantially gainful occupation from the date of incurrence of such disability to the date of death. Without prejudice to any other cause of disability, the permanent loss of the use of both feet, or both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the total loss of hearing of both ears, or the organic loss of speech, shall be deemed total and permanent disability for the purpose of insurance under this provision. The right to insurance under this provision may not be determined prior to the death of such person.

(c) No rights, benefits or privileges, except the privilege of designating or changing the beneficiary, shall accrue to any such person during his lifetime; no policy or certificate of insurance shall be issued and no premiums shall be required for the purpose of continuing any such insurance in force.

(d) Insurance when authorized under this provision shall be effective from the date such person applied for insurance while in the active service and shall be deemed to have been continued in force to the date of his death.

(e) Upon the death of such person, insurance authorized under this provision shall be deemed to have matured and payment will be made to the party or parties entitled to payment and in the manner provided in the National Service Life Insurance Act of 1940, as amended August 1, 1946, and regulations issued pursuant thereto.

(f) There shall be deducted from the proceeds of such insurance the amount of the premiums payable thereon from the date of application to date of total and permanent disability or to date of death, if total and permanent disability in line of duty was not incurred.

(g) Payments of insurance benefits under this provision shall be made directly from the National Service life insurance appropriation.

[13 FR 7121, Nov. 27, 1948]

National Service Life Insurance Appropriations

§ 8.102 Crediting of premiums to and payment of benefits from the National Service Life Insurance appropriation.

(a) All premiums and other collections on insurance granted or reinstat-

ed, pursuant to the following provisions of law, and on any total disability income provision attached thereto, shall be credited directly to the National Service Life Insurance appropriation:

(1) The second sentence of section 602(c)(2), or the first proviso of section 602(v)(1) of the National Service Life Insurance Act, as amended August 1, 1946; and

(2) Policies of insurance referred to in paragraph(a)(1) of this section issued on the modified life or ordinary life plans under 38 U.S.C. 704 (c) or (d), respectively.

(b) Any payment of benefits on insurance granted, deemed to have been granted, continued in force, or reinstated pursuant to the following provisions of law, and on any total disability income provisions attached thereto, shall be made directly from the National Service Life Insurance appropriation:

(1) The second sentence of section 602(c)(2), section 602(c)(3), section 602(m)(2), section 602(p), or the first proviso of section 602(v)(1) of the National Service Life Insurance Act, as amended; and

(2) Policies of insurance referred to in paragraph (b)(1) of this section issued on the modified life or ordinary life plans under 38 U.S.C. 704(c) or (d), respectively.

[30 FR 8475, July 2, 1965]

National Service Life Insurance Nonparticipating Funds

§ 8.103 Crediting of premiums to and payment of benefits from the Service-Disabled Veterans' Insurance Fund, the Veterans' Special Term Insurance Fund and the Veterans Reopened Insurance Fund.

(a) All premiums and other collections for insurance issued under the provisions of section 620 of the National Service Life Insurance Act, as amended, or 38 U.S.C. 722(a), and for any modified life or ordinary life plans of such insurance issued under 38 U.S.C. 704 (c) or (d), shall be credited directly to a fund in the Treasury of the United States to be known as the Service-Disabled Veterans' Insurance Fund. Any payments on such insurance shall be made directly from such fund.

(b) All premiums and other collections for insurance issued under the provisions of section 621 of the National Service Life Insurance Act, as amended, or 38 U.S.C. 723(b), and for any modified life or ordinary life plans of such insurance issued under 38 U.S.C. 704 (c) or (d), and any total disability income provision attached thereto, shall be credited directly to a fund in the Treasury of the United States to be known as the Veterans' Special Term Insurance Fund. Any payments on such insurance and any total disability income provision attached thereto shall be made directly from such fund.

(c) All premiums and other collections for insurance issued under the provisions of 38 U.S.C. 725, and for any modified life or ordinary life plans of such insurance issued under 38 U.S.C. 704 (c) or (d), and for any total disability income provision attached thereto, shall be credited directly to the Veterans Reopened Insurance Fund in the Treasury of the United States. Any payments on such insurance and any total disability income provision attached thereto shall be made directly from such fund. The Administrator shall, from time to time, determine the administrative costs to the Government which in his judgment are properly allocable to insurance issued under 38 U.S.C. 725, and any modified life or ordinary life plans of such insurance issued under 38 U.S.C. 704 (c) or (d), and any total disability income provision attached thereto. Such administrative costs which are allocable to the Veterans Administration shall be transferred from the Veterans Reopened Insurance Fund to the appropriation "General Operating Expenses, Veterans Administration", and the remainder of the administrative costs, as determined by the Administrator, shall be transferred to the general fund receipts in the Treasury. The initial administrative costs of issuing such insurance and any total disability income provision attached thereto shall be transferred over such period of time as the Administrator deter-

mines to be reasonable and practicable.

(79 Stat. 130; 38 U.S.C. 725 and note)

[30 FR 3653, Mar. 19, 1965, as amended at 30 FR 8476, July 2, 1965]

National Service Life Insurance Policy Forms

§ 8.108 Forms of policies.

The forms of policies of insurance, listed in paragraphs (a) through (v) of this section, are hereby prescribed for use in granting National Service Life Insurance applied for in accordance with the provisions of the National Service Life Insurance Act of 1940, and the National Service Life Insurance provisions of title 38, United States Code, amendments and supplements thereto, and Veterans Administration regulations promulgated pursuant thereto. Contracts of insurance authorized to be made in accordance with the terms and conditions set forth in the forms and policy plans listed in paragraphs (a) through (v) of this section are subject in all respects to the applicable provisions of Title 38, United States Code, amendments and supplements thereto, and applicable Veterans Administration regulations promulgated pursuant thereto, all of which together with the insured's application, required evidence of health, including physical examination, if required, and tender of premium shall constitute the contract. Any such policy that has been or is hereafter issued or reinstated under any provision of the law which provides for premiums being credited to other than the National Service Life Insurance Fund shall not participate in any gains or savings of such funds.

(a) Five-year level premium term plan (VA Form 9-1660).

(b) Ordinary life plan (VA Form 9-1661).

(c) Twenty payment life plan (VA Form 9-1662).

(d) Thirty payment life plan (VA Form 9-1663).

(e) Twenty year endowment plan (VA Form 9-1664).

(f) ——— year endowment plan (VA Forms 9-1665 and 9-1666).

(g) Renewable nonconvertible five-year level premium term plan (VA Form 9-4400).

(h) Five-year level premium term plan (VA Form 9-4401).

(i) Ordinary life plan (VA Form 9-4402).

(j) Twenty payment life plan (VA Form 9-4403).

(k) Thirty payment life plan (VA Form 9-4404).

(l) Twenty year endowment plan (VA Form 9-4405).

(m) Endowment plan maturing at age 60 (VA Form 9-4406).

(n) Endowment plan maturing at age 65 (VA Form 9-4407).

(o) Limited convertible five-year level premium term plan (VA Forms 9-4408 and 9-4412).

(p) Ordinary life plan; Twenty payment life plan; and Thirty payment life plan; (VA Forms 9-4409 and 9-4412).

(q) Twenty year endowment plan; Endowment plan maturing at age 60; and Endowment plan maturing at age 65; (VA Forms 9-4410 and 9-4412).

(r) Ordinary life plan; Twenty payment life plan; and Thirty payment life plan; (VA Forms 29-8168, 29-8169, and 29-8170).

(s) Twenty year endowment plan; Endowment plan maturing at age 60; and Endowment plan maturing at age 65; (VA Forms 29-8171, 29-8172, and 29-8173).

(t) Modified life plan; (VA Forms 29-8161, 29-8162, 29-8163, 29-8164, 29-8165, 29-8166, and 29-8167).

(u) Ordinary life plan at age 65; (VA Forms 29-8175, 29-8176, 29-8177, 29-8178, 29-8179, 29-8180, and 29-8181).

(v) One year net single premium endowment plan; (VA Form 29-8174).

[21 FR 9715, Dec. 7, 1956, as amended at 24 FR 7332, Sept. 11, 1959; 30 FR 3654, Mar. 19, 1965]

NATIONAL SERVICE LIFE INSURANCE ISSUED ON OR AFTER APRIL 25, 1951

§ 8.110 National Service life insurance issued pursuant to section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code.

(a) National Service life insurance on a permanent plan, issued pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act, or section 781 of Title 38, United States Code, shall be issued on the same plan and under the same terms and conditions as the National Service life insurance which was surrendered: *Provided*, That waiver of premiums under section 602(n) of the National Service Life Insurance Act, as amended, or section 712 of Title 38, United States Code, shall not be denied because the total disability of the applicant commenced prior to the date of his application for such insurance. The amount of permanent plan National Service Life insurance issued pursuant to said section 5, section 623, or section 781 shall not be in excess of the amount of insurance which was surrendered.

(b) National Service life insurance on the 5-year level premium term plan, issued pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code, shall be issued under the same terms and conditions as the National Service life insurance 5-year level premium term policy which expired. The amount of 5-year level premium term insurance issued pursuant to said section 5, section 623, or section 781 shall not be in excess of the amount of term insurance which expired.

(c) The amount of insurance granted under said section 5, section 623 or section 781, plus the amount of any other insurance (National Service life—United States Government life—War Risk) in force under premium-paying conditions or as paid-up or extended insurance, shall not exceed $10,000.

[24 FR 7332, Sept. 11, 1959]

§ 8.111 National Service Life Insurance issued under section 620 of the National Service Life Insurance Act, as amended, and section 722(a) of Title 38, United States Code.

(a) National Service Life Insurance granted under the provisions of section 620 of the National Service Life Insurance Act, as amended, and 38 U.S.C. 722(a) shall be issued upon the same terms and conditions as are contained in the standard policies of National Service Life Insurance, except that: (1) The premium rates, cash, loan, paid-up, and extended values shall be based upon the Commissioners 1941 Standard Ordinary Table of Mortality with interest at the rate of 2¼ per centum per annum; (2) all settlements on policies involving annuities shall be calculated on the basis of the Annuity Table for 1949 with interest at the rate of 2¼ per centum per annum; (3) all such insurance shall be issued on a nonparticipating basis; (4) waiver of premiums under 38 U.S.C. 712 shall not be denied because the service-connected disability of the applicant became total in degree prior to the effective date of such insurance; (5) effective May 1, 1965, insurance issued under 38 U.S.C. 722(a) on the modified life plan shall be issued under the same terms and conditions as are provided in this paragraph, except that at the end of the day preceding the 65th birthday of the insured, the face value of the modified life plan policy in force by payment or waiver of premiums and the amount of any extended term insurance thereunder shall be automatically reduced by one-half thereof, without any reduction in the premium; any indebtedness against the policy at the time of reduction will be continued on the reduced amount of insurance; and if the policy is on extended term insurance at the end of the day preceding the 65th birthday of the insured the provisions of § 8.29(c) shall apply; (6) the modified life plan policy cannot be issued if the applicant has attained the insurance age of 61 years and must be effective before such date.

(b) National Service Life Insurance granted under section 620 of the National Service Life Insurance Act, as

amended and 38 U.S.C. 722(a), shall be on one or more of the following plans: 5-year level premium term, modified life, ordinary life, 20-payment life, 30-payment life, 20-year endowment, endowment at age 60, and endowment at age 65. No insurance shall be issued on an endowment plan if the applicant is totally disabled. Insurance issued under said section 620 and 38 U.S.C. 722(a) shall be in the amount of not more than $10,000 nor less than $1,000 in multiples of $500, and no policy may be issued for less than $1,000. However, ordinary life plan insurance issued under 38 U.S.C. 704(d) to replace any amount of insurance reduced under a modified life plan policy by reason of attainment of age 65, shall be issued in an amount of not less than $500, in multiples of $250, but not in excess of one-half of the face amount of the modified life policy in force by payment or waiver of premiums on the day before the insured's 65th birthday. No person may carry at any one time a combined amount of insurance in force in excess of $10,000 under the War Risk Insurance Act, as amended, the World War Veterans' Act, as amended, the National Service Life Insurance Act, as amended, and chapter 19 of title 38, United States Code.

[30 FR 3654, Mar. 19, 1965]

§ 8.112 National Service life insurance issued under section 621 of the National Service Life Insurance Act, as amended, and section 723 (b) of Title 38, United States Code.

(a) National Service life insurance granted under the provisions of section 621 of the National Service Life Insurance Act, as amended, shall be issued upon the same terms and conditions as are contained in the standard policies of National Service life insurance on the 5-year level premium term plan, except (1) such insurance may not be exchanged for or converted to insurance on any other plan prior to January 1, 1959; (2) the premium rates for such insurance shall be based on the Commissioners 1941 Standard Ordinary Table of Mortality with interest at the rate of 2¼ per centum per annum; (3) all settlements on policies involving annuities shall be calculated on the basis of the annuity table for 1949, with interest at the rate of 2¼ per centum per annum; and (4) such insurance and any total disability income provision added thereto shall be nonparticipating. National Service life insurance granted under section 621 of the National Service Life Insurance Act shall be in an amount of not more than $10,000 nor less than $1,000 in multiples of $500: *Provided*, That no policy shall be issued for less than $1,000.

(b) Effective January 1, 1959, 5-year level premium term insurance issued under section 621 of the National Service Life Insurance Act, as amended, may be converted to a permanent plan of insurance or exchanged for a policy of limited convertible 5-year level premium term insurance issued pursuant to 38 U.S.C. 723(b). National Service Life Insurance issued pursuant to 38 U.S.C. 723(b) shall be issued upon the same terms and conditions as are contained in standard policies of National Service Life Insurance except (1) after September 1, 1960, limited convertible term insurance may not be issued or renewed after the insured's 50th birthday; (2) the premium rates, cash, loan, paid-up, and extended values shall be based on table X-18 (1950-54 Intercompany Table of Mortality) with interest at the rate of 2½ per centum per annum; (3) all settlements on policies involving annuities shall be calculated on the basis of the Annuity Table for 1949 with interest at the rate of 2½ per centum per annum; (4) such insurance and any total disability income provision attached thereto shall be nonparticipating. Insurance issued under 38 U.S.C. 723(b) shall not be in excess of the amount of insurance in force granted under section 621 of the National Service Life Insurance Act and shall be in multiples of $500 but no policy shall be for less than $1,000. However, ordinary life plan insurance issued under 38 U.S.C. 704(d) to replace any amount of insurance reduced under a modified life plan policy by reason of attainment of age 65, shall be issued in an amount of not less than $500, in multiples of $250, but not in excess of one-half of the face amount of the modified life plan policy in force by

payment or waiver of premiums on the day before the insured's 65th birthday.

(c) No person may carry at any one time a combined amount of insurance in force in excess of $10,000 under the War Risk Insurance Act, as amended, the World War Veterans' Act, as amended, the National Service Life Insurance Act, as amended, and chapter 19 of Title 38, United States Code.

[24 FR 22, Jan. 1, 1959, as amended at 30 FR 3654, Mar. 19, 1965]

§ 8.112a National Service Life Insurance issued under section 725 of Title 38, United States Code.

(a) National Service Life Insurance may be granted under the provisions of 38 U.S.C. 725(b), on and after May 1, 1965, and prior to May 3, 1966, to persons referred to in § 8.0(d)(2)(i). It shall be issued under the same terms and conditions as are contained in standard policies of National Service Life Insurance, except (1) 5-year level premium term insurance may not be issued; (2) the net premium rates shall be based on the 1958 Commissioners Standard Ordinary Basic Mortality Table, adjusted at the time of issue as the Administrator determines to be necessary for sound actuarial operations, and thereafter such premiums may be adjusted as the Administrator determines to be so necessary but at intervals of not less than 2 years; (3) an additional premium to cover administrative costs to the Government as determined by the Administrator at time of issue shall be charged for insurance issued under 38 U.S.C. 725(b) and for any total disability income provision attached thereto, and thereafter such costs may be adjusted as the Administrator determines to be necessary but at intervals of not less than 5 years; (4) all cash, loan, extended and paid-up insurance values shall be based on the 1958 Commissioners Standard Ordinary Basic Mortality Table; (5) all settlements on policies involving annuities shall be calculated on the basis of the Annuity Table for 1949; (6) all calculations in connection with insurance issued under 38 U.S.C. 725(b) shall be based on interest at the rate of 3½ per centum per annum; (7) the insurance or any provision attached thereto cannot be reinstated if it has been lapsed for more than 5 years; (8) the insurance and any total disability income provision attached thereto shall be issued on a nonparticipating basis; (9) extended term insurance shall not be available prior to the completion of the first policy year and premiums for such year must have been paid or waived; (10) the effective date of the insurance shall be the date the application and tender of premiums therefor are mailed or otherwise delivered to the Veterans Administration; (11) insurance issued under 38 U.S.C. 704(c) and 725(b) on the modified life plan shall be issued under the same terms and conditions as are provided in this paragraph, except that at the end of the day preceding the 65th birthday of the insured, the face value of the modified life plan policy in force by payment or waiver of premiums and the amount of any extended term insurance thereunder shall be automatically reduced by one-half thereof, without any reduction in the premium; any indebtedness against the policy at the time of reduction will be continued on the reduced amount of insurance; and if the policy is on extended term insurance at the end of the day preceding the 65th birthday of the insured the provisions of § 8.29(c) shall apply; and (12) the modified life plan policy cannot be issued if the applicant has attained the insurance age of 61 years.

(b) National Service Life Insurance may be granted under the provisions of 38 U.S.C. 725(c), on and after May 1, 1965, and prior to May 3, 1966, to persons referred to in § 8.0(d)(2)(ii). Such insurance shall be issued under the same terms and conditions as are contained in standard policies of National Service Life Insurance, except (1) 5-year level premium term insurance may not be issued; (2) the premiums charged for the insurance issued under 38 U.S.C. 725(c) may be adjusted at the time of issue as the Administrator determines to be necessary for sound actuarial operations and thereafter such premiums may be adjusted from time to time as the Administrator determines to be so necessary; for the purpose of establishing the initial

premium rates for insurance issued under 38 U.S.C. 725(c), and for any subsequent adjustment thereof, the service-connected disabled group and non-service-connected disabled group may be separately classified, and charged a different premium rate for the protection granted; and individuals within each of the two groups may be separately rated, depending upon the nature of their impairment and the risk involved; (3) an additional premium to cover administrative costs to the Government as determined by the Administrator at the time of issue shall be charged for insurance issued under 38 U.S.C. 725(c) and for any total disability income provision attached thereto (for which the insured may subsequently become eligible) and thereafter such costs may be adjusted as the Administrator determines to be necessary but at intervals of not less than 5 years and for this purpose the service-connected and non-service-connected can be separately classified; (4) the insurance and any total disability income provision attached thereto shall be issued on a nonparticipating basis; (5) all settlements on policies involving annuities shall be calculated on the basis of the Annuity Table for 1949; (6) all calculations in connection with insurance issued under 38 U.S.C. 725(c) shall be based on interest at the rate of 3½ per centum per annum; (7) the insurance or any provision attached thereto cannot be reinstated if it has been lapsed for more than 5 years; (8) extended term insurance shall not be available prior to the completion of the first policy year and premiums for such year must be paid or waived; (9) the effective date of the insurance shall be the date the application and tender of premiums therefor are mailed or otherwise delivered to the Veterans Administration; (10) insurance issued under 38 U.S.C. 704(c) and 725(c) on the modified life plan shall be issued under the same terms and conditions as are provided in this paragraph, except that at the end of the day preceding the 65th birthday of the insured, the face value of the modified life plan policy in force by payment or waiver of premiums and the amount of any extended term insurance thereunder shall be automatically reduced by one-half thereof, without any reduction in the premium; any indebtedness against the policy at the time of reduction will be continued on the reduced amount of insurance; and if the policy is on extended term insurance at the end of the day preceding the 65th birthday of the insured the provisions of § 8.29(c) shall apply; and (11) the modified life plan policy cannot be issued if the applicant has attained the insurance age of 61 years.

(c) National Service Life Insurance may be granted under the provisions of 38 U.S.C. 725(c), on or after May 1, 1965, and prior to May 3, 1966, to persons referred to in § 8.0(d)(2)(iii). Such insurance shall be issued in accordance with the provisions of paragraphs (b) and (e) of this section and with the following additional provisions:

(1) The insurance shall not be payable for death of the insured which occurs within 1 year from the effective date if such death is caused or is contributed to directly or indirectly by

(i) Bodily or mental (including nervous) illness, injury, infirmity or disease of any kind or any medical or surgical treatment of such illness, injury, infirmity or disease which existed on the effective date of such insurance; or by

(ii) Any other bodily, or mental (including nervous) illness, injury, infirmity or disease arising as a complication or sequela of or secondary to progress or treatment of the bodily or mental (including nervous) illness, injury, infirmity or disease which existed on the effective date of such insurance.

(2) The insurance shall not be payable if the insured, while sane or insane, shall commit suicide within 1 year from the effective date;

(3) If the insurance is not payable for death within 1 year from the effective date as set forth in paragraphs (c)(1) and (2) of this section the premiums paid, without interest, less any indebtedness will be paid to the designated beneficiary, if living, otherwise to the insured's estate;

(4) If the insurance matures by death of the insured within 1 year from the effective date, the claimant will be required to submit notice of

death and proof of the cause of death to Veterans Administration office which has jurisdiction over the insurance records as soon as practicable after death and in any event not later than 90 days from the date of death of the insured. In such cases the Veterans Administration shall have the right and opportunity to investigate the circumstances of death, to examine the body and, if not prohibited by law, to make an autopsy.

(5) Any policy of insurance issued under this paragraph may be declared fully paid up when the residual of premiums paid, after deduction of all charges for death and disability protection and administrative expenses, is equal to the value of future benefits.

(d) A 1-year net single premium endowment policy of National Service Life Insurance may be granted on or after May 1, 1965, and prior to May 3, 1968, to persons referred to in § 8.0(d)(2)(iii) in lieu of insurance issued to such persons under paragraph (c) of this section. Such 1-year net single premium endowment policy will be issued under the following terms and conditions: (1) It will be issued in an amount of not more than $10,000 nor less than $1,000 in multiples of $500 but no policy may be issued for less than $1,000; (2) The single premium for the policy will be $966.18 per $1,000 of insurance plus an additional charge for administrative cost; (3) The policy shall be effective as of the date the application and payment of the single required premium is mailed or otherwise delivered to the Veterans Administration; (4) The policy will have no loan, paid-up or extended insurance values, but will have a cash value as provided in this paragraph; (5) The cash value of the 1-year endowment policy at the end of the first policy month or at any time thereafter during the remainder of the 1-year period shall be $966.18 plus one-twelfth of $33.82 per $1,000 of face amount of insurance for each completed policy month the insurance has been in force. Upon written request therefor and upon complete surrender of the insurance with all claims thereunder, the United States will pay to the insured the cash value of the policy less any indebtedness, provided the policy has been in force for at least one month. Unless otherwise requested by the insured, a surrender will be deemed completed as of the end of the premium month in which the application for cash surrender is mailed or otherwise delivered to the Veterans Administration, or as of the date of the check for the cash value, whichever is the later; (6) The policy shall be issued on a nonparticipating basis; (7) If the policy matures as an endowment it will be paid to the insured in a lump sum or in accordance with the provisions of §§ 8.92 and 8.81; (8) If the policy matures as a death claim during the 1-year endowment period the insurance will be paid in accordance with §§ 8.77(a), 8.78, 8.81, 8.81a, 8.88, 8.89, 8.90, 8.91, and 8.94, whichever is applicable; (9) The policy cannot be exchanged for any other policy of National Service Life Insurance; (10) The policy shall contain no provision for waiver of premiums under 38 U.S.C. 712 because of the total disability of the insured; (11) The provisions of §§ 8.0 through 8.118 will not be applicable to the 1-year net single premium endowment policy except for §§ 8.0(d), 8.1, 8.46, 8.47, 8.52, 8.54, 8.55, 8.59, 8.60, 8.61, 8.62, 8.64(b), 8.71, 8.76, 8.77(a), 8.78, 8.81, 8.81a, 8.88, 8.89, 8.90, 8.91, 8.92, 8.93, 8.94, 8.102, 8.108, and 8.117; (12) The provisions of chapter 19 of title 38, United States Code, shall not apply to the 1-year single premium endowment policy except sections 701, 703, 706 as to cash value, 710, 711, 717, 718, 719(a), 725, 783, 784, 785, and 787. The other provisions of title 38, United States Code, which are applicable to premium paying contracts of National Service Life Insurance will apply to the 1-year endowment policy.

(e) Except as provided in paragraph (d) of this section, National Service Life Insurance granted under 38 U.S.C. 725 shall be on one or more of the following plans: modified life, ordinary life, 20-payment life, 30-payment life, 20-year endowment, endowment at age 60, and endowment at age 65. Insurance issued under 38 U.S.C. 725 shall be in the amount of not more than $10,000 nor less than $1,000 in multiples of $500, and no policy may be issued for less than $1,000. Howev-

er, insurance on the ordinary life plan issued under 38 U.S.C. 704(d) to replace any amount of insurance reduced under a modified life plan policy by reason of attainment of age 65 shall be issued in an amount of not less than $500, in multiples of $250, but not in excess of one-half of the face amount of the modified life plan policy in force by payment or waiver of premiums on the day before the insured's 65th birthday. No person may carry at any one time a combined amount of insurance in force in excess of $10,000 under the War Risk Insurance Act, as amended; the World War Veterans' Act, as amended; the National Service Life Insurance Act, as amended; and chapter 19 of Title 38, United States Code.

[30 FR 3655, Mar. 19, 1965, as amended at 33 FR 7326, May 17, 1968]

§ 8.112b National Service Life Insurance issued on the modified life plan and on the ordinary life plan under section 704(b), (c), and (d) of Title 38, United States Code.

(a) Effective May 1, 1965, and prior to the insured attaining the insurance age of 61 years, a policy of participating insurance may be converted or exchanged in accordance with §§ 8.33, 8.34, and 8.36, whichever is applicable, for a modified life plan issued under 38 U.S.C. 704(b). Insurance issued under 38 U.S.C. 704(b) shall be on the same terms and conditions as the participating insurance it replaces, except (1) the premium rates for such insurance shall be based on the 1958 Commissioners Standard Ordinary Basic Table of Mortality and interest at the rate of 3 per centum per annum; (2) all cash, loan, paid-up and extended values shall be based on the 1958 Commissioners Standard Ordinary Basic Table of Mortality and interest at the rate of 3 per centum per annum; and (3) at the end of the day preceding the 65th birthday of the insured, the face value of the modified life plan policy in force by payment or waiver of premiums and the amount of any extended term insurance thereunder shall be automatically reduced by one-half thereof, without any reduction in the premium; any indebtedness against the policy at the time of reduction will be continued on the reduced amount of insurance; and if the policy is on extended term insurance at the end of the day preceding the 65th birthday of the insured the provisions of § 8.29(c) shall apply.

(b) Effective May 1, 1965, and prior to the insured attaining the insurance age of 61 years, a policy of nonparticipating insurance may be converted or exchanged in accordance with §§ 8.33, 8.34, and 8.36, whichever is applicable, for a modified life plan issued under 38 U.S.C. 704(c). Insurance issued under 38 U.S.C. 704(c) shall be under the same terms and conditions as the nonparticipating insurance it replaces, except that (1) term insurance issued under section 621 of the National Service Life Insurance Act, as amended, shall be deemed for the purpose of this paragraph to have been issued under 38 U.S.C. 723(b); and (2) at the end of the day preceding the 65th birthday of the insured, the face value of the modified life plan policy in force by payment or waiver of premiums and the amount of any extended term insurance thereunder shall be automatically reduced by one-half thereof, without any reduction in the premium; any indebtedness against the policy at the time of reduction will be continued on the reduced amount of insurance; and if the policy is on extended term insurance at the end of the day preceding the 65th birthday of the insured the provisions of § 8.29(c) shall apply.

(c) National Service Life Insurance on the ordinary life plan issued under 38 U.S.C. 704(d) shall, except for the provisions concerning automatic reduction on the day preceding the insured's 65th birthday, be issued on the same terms and conditions as the insurance on the modified life plan which the ordinary life plan replaces. The premium rates, cash, loan, paid-up and extended insurance values on the ordinary life policy issued under this paragraph shall be based on the same mortality tables and interest rates as the insurance issued under the modified life policy which it replaces. However, a participating ordinary life policy issued under this paragraph can be exchanged only for another participating permanent plan

policy having a higher reserve (§ 8.35) and with premium rates, reserve, loan, paid-up and extended insurance values being based on the American Experience Table of Mortality and interest at the rate of 3 per centum per annum. Settlements on ordinary life policies issued under this paragraph involving annuities shall be based on the same mortality or annuity tables and interest rates as such settlements on the modified life policy which it replaces. Waiver of premiums on the ordinary life plan under 38 U.S.C. 712 shall not be denied because the total disability of the insured commenced prior to the effective date of such policy, provided premiums were being waived under 38 U.S.C. 712 on the modified life plan policy, which the ordinary life plan replaced, on the date before the insured's 65th birthday, or such waiver of premiums is subsequently granted. Insurance on the ordinary life plan issued under this paragraph shall be granted in multiples of $250 but not less than $500 and such insurance shall not be granted in excess of one-half of the face amount of the modified life plan policy which was in force by payment or waiver of premiums on the day before the insured's 65th birthday.

[30 FR 3656, Mar. 19, 1965]

PREMIUM WAIVER UNDER SECTION 622 OF THE NATIONAL SERVICE LIFE INSURANCE ACT, AS AMENDED, AND SECTION 724 OF TITLE 38, UNITED STATES CODE

§ 8.113 Premium waiver under section 622 of the National Service Life Insurance Act, as amended, and section 724 of Title 38, United States Code.

(a) Persons in the active service for a continuous period in excess of 30 days, after April 25, 1951, who are insured under a 5-year level premium term National Service life insurance policy, upon written application made while in the active service prior to January 1, 1957, may be granted waiver of premiums which become due during the remainder of the insured's continuous active service and for 120 days thereafter, provided the insurance is not lapsed at the time the waiver is to be effective.

(b) Persons in the active service for a continuous period in excess of 30 days, after April 25, 1951, who are insured under a permanent plan of National Service life insurance, upon written application made while in the active service prior to January 1, 1957, may be granted waiver of that portion of the premium representing the cost of the pure insurance risk, as determined by the Administrator, which becomes due during the remainder of such continuous active service and for 120 days thereafter; *Provided*, That the insurance is not lapsed at the time the waiver is to be effective: *And provided further*, That during the period of such waiver the portion of the premium which is not required for the pure insurance risk is paid when due (or within the grace period).

(c) No premiums may be waived under this section which become due on or prior to June 1, 1951, or which become due on or prior to the first day of the second calendar month following the insured's entry into active service, whichever is the later date: *Provided*, That no premium shall be waived for any period prior to the date of application therefor, except that where the insured is determined, in accordance with the Missing Persons Act, to have been in a status of missing, missing in action, interned, captured, beleaguered, or besieged, at any time after April 25, 1951, and before April 26, 1952, (1) all premiums due or paid on term insurance after June 1, 1951, during the period of such status and during the remainder of the period of continuous active service and 120 days thereafter shall be waived, unless the insured requests in writing that the waiver be terminated; and (2) that portion of any permanent insurance premium, which represents the cost of the pure insurance risk, due or paid after June 1, 1951, during the period of such status and during the remainder of the period of continuous active service and 120 days thereafter, shall be waived, provided the insured files written application therefor within 120 days after the passage of Public Law 193, 84th Congress, approved July 29, 1955, or the date of his return to military jurisdiction, whichever is later: *Provided*, Except where

the amount of the dividend earned would exceed the amount of the premium waived, the waiver shall be automatic if the insured dies or is declared dead while in such missing status or if the insured dies on or prior to the last day on which application for the waiver may be made. Except as provided in this paragraph, application for waiver of premiums under section 622 must be made prior to January 1, 1957. Subject to these limitations, and except as hereinafter provided in this paragraph, premium waiver under this section shall be effective as follows:

(i) As of the premium due date of the policy on or after the date application for waiver is delivered to the Veterans Administration. If forwarded by mail, properly addressed, the postmark date will be taken as the date of delivery.

(ii) As of the premium due date of the policy on or after the date application for waiver is executed and placed in military or naval channels. Unless otherwise shown, the date the application is executed will be taken as the date it was placed in such channels.

(iii) If premiums are being waived under section 602(n) of the National Service Life Insurance Act, as amended, at the time application for waiver under this section is made, such waiver will be effective at the termination of the premium waiver under section 602(n) of the act, provided waiver under section 602(n) terminates while the insured has continued in active service without interruption or within 120 days following discharge from such active service and the insured is otherwise eligible for waiver under this section.

(d) Premiums tendered on term insurance to cover a period during which waiver is effective under this section shall be refunded without interest. If premiums for the full amount are tendered in payment of permanent plan insurance during a period in which waiver is effective under this section, only that portion of such premiums which represents the cost of pure insurance risk, as determined by the Administrator, shall be refunded, and such refund shall be with interest.

(e) National Service life insurance on the 5-year level premium term plan or limited convertible 5-year level premium term plan shall be automatically renewed for an additional 5-year period at the premium rate for the then attained age of the insured, provided the premiums on such insurance are being waived under this section at the expiration of the term period: *Provided,* That limited convertible term insurance may not be renewed after the insured's fiftieth birthday. The renewal of insurance under this paragraph shall be effective as of the day following the expiration of the preceding term period, and the premium for such renewed insurance will be at the applicable level premium term rate for the attained age of the insured on that day. The premiums on the insurance renewed under this paragraph shall continue to be waived while the insured continues in active service and for 120 days after separation therefrom.

(f) The waiver of premiums under this section will terminate at the expiration of the 120-day period following separation from active service, on or after January 1, 1957, even though the insured reenters active service within such 120-day period. However, if the insured reenters active service on the date of separation or the following day, such reentrance shall be deemed to be a continuation of the previous active service and the waiver continued as otherwise provided.

(g) National Service life insurance on which premium waiver has ceased under this section, because of the expiration of the 120-day period following the insured's date of separation from continuous active service, may be continued by the payment of premiums the due date of the first premium payable being the next regular monthly due date of the premium under the policy following expiration of the 120 day period. The insurance shall lapse if premiums are not paid when due or within the grace period allowed for the payment of such premiums.

(h) If the insured fails to pay when due (or within the grace period) that portion of the premium which is not required for the pure insurance risk on any permanent plan of National Service life insurance for which the cost of the pure insurance risk is being waived

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under this section, the insurance shall lapse and the premium waiver cease. Upon reinstatement of the insurance, a new application for waiver of premiums under this section will not be required if the insured has continued in the active service without interruption and is otherwise entitled to continuance of such waiver.

(i) The insured while in the active service or within 120 days following separation from such service may by request terminate premium waiver under this section: *Provided*, That such request shall not be effective prior to the date it is mailed or otherwise delivered to the Veterans' Administration.

(j) If waiver of premiums is granted under section 602(n) of the National Service Life Insurance Act, as amended, or section 712 of Title 38, United States Code, while premiums are being waived under this section, waiver under this section will be suspended. If the insured is otherwise entitled, upon termination of waiver under section 602(n) or section 712, waiver of premiums under this section will be resumed for the remainder of the insured's continuous active service and for 120 days thereafter.

(k) Waiver of premiums under this section shall not include the premiums due and payable on the total disability income provision attached to such National Service life insurance policy.

(l) During any period waiver of premium is effective under this section, the insurance shall be nonparticipating.

(m) A 5-year level premium term or limited convertible term policy on which premiums have been waived under this section during any portion of the term period shall have no reserve value.

(n) In any case in which insurance matures by death on or after January 1, 1972, while in force under this section, there shall be placed as an indebtedness against such insurance the amount of premiums, less dividends, waived on and after that date which, unless otherwise paid, shall be deducted from the proceeds. In such case, the liability of the Government under 38 U.S.C. 724(b) shall be reduced by the amount so deducted from the proceeds.

[16 FR 12996, Dec. 27, 1951, as amended at 18 FR 3715, June 30, 1953; 20 FR 7216, Sept. 28, 1955; 21 FR 10383, Dec. 28, 1956; 22 FR 1720, Mar. 16, 1957; 24 FR 22, Jan. 1, 1959; 37 FR 4194, Feb. 29, 1972]

Surrender Under Section 5 of Public Law 23, 82d Congress, of Permanent Plan Policies in Force Less Than One Year

§ 8.114 Surrender of permanent plan policies of National Service Life Insurance, in force for less than 1 year, under the provisions of section 5, Servicemen's Indemnity Act of 1951.

A permanent plan policy of National Service life insurance in force for less than 1 year by payment or waiver of premiums shall not have a cash value. Such a policy which was not lapsed could be surrendered by the insured while in active service prior to January 1, 1957, with right of replacement pursuant to the provisions of section 5 of the Servicemen's Indemnity Act of 1951, section 623 of the National Service Life Insurance Act or section 781 of Title 38, United States Code, upon written request therefor and upon complete surrender of the insurance with all claims thereunder.

[24 FR 7333, Sept. 11, 1959]

National Service Life Insurance Granted Under Section 722(b) of Title 38, United States Code

§ 8.116 National Service life insurance granted under section 722(b) of Title 38, United States Code.

(a) Any person who is shown by evidence satisfactory to the Administrator to have been eligible to be granted National Service life insurance, on or after April 25, 1951, under the provisions of section 620 of the National Service Life Insurance Act or section 722(a) of Title 38, United States Code, but who died without a valid application having been filed for such insurance shall be deemed to have applied for and to have been granted such insurance as of the date of death, in an amount which, together with any other National Service life insurance

or United States Government life insurance in force or servicemen's indemnity, shall aggregate $10,000 provided the following conditions are met:

(1) Such person is determined to have been mentally incompetent from a service-connected disability, (i) at the time of release from active service, or (ii) during any part of the 1-year period from the date any disability is first determined by the Veterans Administration, by a rating made subsequent to discharge, to be service-connected or (iii) after release from active service but is not rated service-connected disabled by the Veterans Administration until after death; and (this subparagraph is effective on and after Jan. 1, 1959).

(2) Such person is determined to have remained continuously so mentally incompetent, (i) from the date of release from active service until date of death, or (ii) from the date such person is determined to have been mentally incompetent during the one year period until date of death, or (iii) if not rated until after death, from the date the mental incompetency began until date of death, and

(3) Such person is shown to have died before the appointment of a guardian or within one year after the appointment of a guardian.

The date to be used for determining whether such person was insurable according to the standards of good health established by the Administrator, except for the service-connected disability or disabilities, shall be the date of release from active service or the date the person became mentally incompetent, which ever is the later.

(b) Written application for payment of insurance granted under section 722(b) of Title 38, United States Code, must be filed with the Veterans Administration by person or persons initially entitled to such payment, within two years after the date of death of the insured or before January 1, 1961, whichever is the later: *Provided,* That if the person initially entitled fails to file valid application and dies (or remarries, if such person is the insured's spouse) within the two-year period, the beneficiary next entitled has the right to file application within such period: *Provided further,* That if the person entitled to file application is shown to have been mentally or legally incompetent at the time the right to file application for such death benefits expires, application may be made at any time within one year after the removal of such disability. The death of the insured, the relationship and age of the claimant as of the date of death of the insured, must be established.

(c) Insurance granted under section 722(b) shall be payable only to the following permitted class of beneficiaries and in the order named

(1) Widow (widower) of the insured (lawful spouse of the insured at the maturity of the insurance), if living and while unremarried.

(2) Child or children of the insured (legitimate and adopted child), if living, in equal shares.

(3) Parent or parents who last bore such relationship to the insured (including a parent by adoption and persons who stood in loco parentis to the insured for a period of not less than one year at any time prior to entry into active service), if living, in equal shares.

(d) Insurance granted under section 722(b) shall be payable at the election of the first beneficiary as follows:

(1) In 240 equal monthly installments at the rate of $5.16 per month for each $1,000 of insurance, but, if the first beneficiary dies (or remarries, if the first beneficiary is the insured's spouse) before 240 monthly installments have been paid, the remaining unpaid monthly installments will be payable to the beneficiary or beneficiaries next entitled within the permitted class, or

(2) In equal monthly installments for the life of the first beneficiary in accordance with the table of monthly installments set forth in option 3 of § 8.80, but, if such beneficiary dies (or remarries, if the first beneficiary is the insured's spouse) before 120 installments certain have been paid, the remaining unpaid monthly installments certain will be payable to the beneficiary or beneficiaries next entitled within the permitted class, or

(3) As a refund life income in monthly installments, as set forth in the table under option 4 of § 8.80 payable

throughout the lifetime of the first beneficiary, but, if such beneficiary dies (or remarries, if the first beneficiary is the insured's spouse) before payment of the number of installments certain, as provided in such table, the remaining unpaid monthly installments payable for such period certain as may be required in order that the sum of the installments certain (including a last installment of such reduced amount as may be necessary) shall equal the face value of the insurance less any indebtedness, will be payable to the beneficiary or beneficiaries next entitled within the permitted class. The law does not authorize settlement under this option in any case in which less than 120 installments may be paid.

(e) A change in the mode of settlement may, within the limitations of paragraph (d) of this section, be made by a beneficiary after payment has commenced provided the change is made within 1 year of original election and, in those instances where Option 3 is changed to Option 4 or Option 3 or 4 is changed to 240 equal monthly installments, satisfactory proof is submitted to establish that the beneficiary's state of health is the same as it was at time of original election. The effective date of the original election for this purpose will be the date it was delivered to the Veterans Administration. If such election was forwarded by mail, properly addressed to the Veterans Administration, the postmark date will be taken as the date of delivery. Such change will be made on the premise that the new election was made initially, and the account will be adjusted accordingly. A condition precedent to any such change will be the repayment of any amount received by the beneficiary in excess of that which would have been due had the new election been made initially.

(f) Upon filing of a valid application and submission of the required proof by the beneficiary first entitled to payment of insurance granted under section 722(b), the monthly installments without interest, which have accrued since the death of the insured (the first installment being due on the date of death of the insured) and the monthly installments which thereafter become payable shall be paid to the beneficiary or beneficiaries entitled. Upon due proof of death of the first beneficiary after payment has been made of at least one installment of insurance granted under section 722(b), the remaining unpaid monthly installments certain in the same amount shall be paid to the person or persons next entitled as beneficiary until all installments certain have been paid.

(g) The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payment. No person shall have a vested right to any installment or installments of insurance granted under section 722(b) and no installment of such insurance shall be paid to the heirs, creditors, or legal representatives as such of the insured or of any beneficiary except as provided in § 8.60. If no person within the permitted class of beneficiaries survives to receive the insurance or any part thereof, no payment of the unpaid installments shall be made.

(h) All payments of National Service life insurance granted under section 722(b) shall be made directly from the Service-Disabled Veterans' Insurance Fund in the Treasury of the United States.

[24 FR 582, Jan. 27, 1959, as amended at 30 FR 8224, June 26, 1965; 32 FR 14275, Oct. 14, 1967]

Appeals

§ 8.117 Appeal to Board of Veterans Appeals.

(a) The provisions of Part 19 of this chapter will be followed in connection with appeals to the Board of Veterans Appeals involving questions pertaining to the denial of applications for insurance, total disability income provision, or reinstatement; disallowance of claims for insurance benefits; and decisions holding fraud or imposing forfeiture. Notice to the applicant or claimant and his representative, if any, of the right to appeal will be sent by the insurance activity having jurisdiction over the case, at time action of denial, disallowance, or forfeiture is taken.

(b) When an appeal to the Board of Veterans Appeals is initiated by a notice of disagreement, any unpaid premiums, normally due under the policy from effective date of issue or reinstatement (as appropriate), will become an interest-bearing lien, enforceable as a legal debt due the United States and subject to all available collection procedures in the event of favorable action by the Board.

(c) Where the adverse action from which appeal is taken involves a change in or addition to insurance currently in force, premium payments must be continued on the existing contract.

[33 FR 3176, Feb. 20, 1968]

Total Disability for Twenty Years or More

§ 8.118 Total disability for twenty years or more.

Where the Disability Insurance Claims activity has made a finding of total disability for insurance purposes and it is found that such disability remained continuously in effect for 20 or more years, the finding will not be discontinued thereafter, except upon a showing that such a determination was based on fraud. The 20-year period will be computed from the date the continuous total disability commenced, as determined by the Disability Insurance Claims activity.

[27 FR 11893, Dec. 1, 1962]

Provisional Regulations

§ 8.185 Title 38, United States Code, section 723, as amended by Public Law 87-223, effective September 13, 1961, provides for payment of a special dividend on insurance heretofore issued under section 621 of the National Service Life Insurance Act of 1940 which has been converted or exchanged for new insurance under section 723(b), and in certain death cases.

(a) *Provisions of the law.* Section 1 of the law adds the following new subsections (d) and (e) to section 723 of Title 38, United States Code:

(d) The Administrator shall determine the amount in the revolving fund referred to in subsection (a) of this section which is in excess of the actuarial liabilities of such fund including contingency reserves. Such excess shall be paid in cash as a special dividend, without interest, subject to the conditions provided in this subsection. The Administrator shall determine the administrative cost to the Veterans' Administration of paying such dividend, which cost shall be deducted from the excess and transferred to the appropriations "General operating expenses—Veterans' Administration". Insurance issued under section 621 of the National Service Life Insurance Act of 1940 or converted or exchanged under subsection (b) of this section, which was in force by waiver or timely payment of premiums or as paid-up or extended term insurance during one of the premium months beginning with the month of November 1960 and ending with the month of January 1961, may be eligible for the special dividend, subject to such conditions, other than specified in this subsection, as the Administrator shall determine to be reasonable and practicable. The dividend shall be paid as soon as practicable after whichever of the following dates is the latest:

(1) the date of enactment of this subsection in case of insurance heretofore converted or exchanged under subsection (b) of this section;

(2) the date insurance issued under section 621 is converted or exchanged under subsection (b) of this section if such conversion or exchange is made within two years after the date of enactment of this subsection; or

(3) the date of death of the policyholder where insurance issued under section 621 is not converted or exchanged and such death occurs on or after the premium due date in November 1960 and before the expiration of two years after the date of enactment of this subsection.

(e) After March 1, 1961, the Administrator shall from time to time transfer from the revolving fund referred to in subsection (a) of this section to general fund receipts in the Treasury such amounts as he determines are in excess of the actuarial liabilities of the fund including contingency reserves.

(b) *Eligibility*—(1) *National Service life insurance which had been converted or exchanged under 38 U.S.C. 723(b) prior to the premium due date in December 1960.* (i) Such insurance which was in force by waiver or timely payment of premiums or as paid-up or extended term insurance during one of the premium months of November 1960, December 1960, or January 1961, is eligible for the special dividend.

(ii) Such insurance which was surrendered for reduced paidup insurance or which was on extended term insurance on or before the premium due date in November 1960, is eligible for the special dividend provided the insurance was in force on the November 1960 premium due date of the parent policy.

(iii) The dividend will be based on the largest amount of such insurance in force during the premium months of November 1960, December 1960, or January 1961.

(iv) The dividend will be paid as soon as practicable after September 13, 1961.

(2) *National Service life insurance issued under section 621 of the National Service Life Insurance Act which had not been converted or exchanged under 38 U.S.C. 723(b) prior to premium due date in December 1960.* (i) Such insurance which was in force by waiver or timely payment of premiums during one of the premium months of November 1960, December 1960 or January 1961 is eligible for the special dividend, if—

(*a*) Such insurance or a part thereof is converted or exchanged under the provisions of 38 U.S.C. 723(b) on or after the premium due date in December 1960 and before September 14, 1963, or

(*b*) The policyholder of such insurance dies on or after the premium due date in November 1960 and before September 14, 1963, without having converted or exchanged such insurance under 38 U.S.C. 723(b) and the insurance is in force at time of death.

(ii) The dividend payable on insurance which is converted or exchanged within the time limitation provided in paragraph (b)(2)(i)(*a*) of this section will be based on the amount of insurance which is so converted or exchanged under 38 U.S.C. 723(b) but not greater than the largest amount of insurance in force during any of the premium months of November 1960, December 1960 or January 1961. The dividend payable on such insurance which has not been so converted or exchanged and which matures within the time limitation provided in paragraph (b)(2)(i)(*b*) of this section will be based on the amount of insurance which is in force at death or the largest amount of insurance which was in force during any of the premium months of November 1960, December 1960 or January 1961, whichever is the lesser.

(iii) A dividend payable under the provisions of this paragraph will be paid as soon as practicable after whichever of the following dates is the earlier:

(*a*) The date any portion of the insurance is converted or exchanged under section 723(b) within the period stated in paragraph (b)(2)(i)(*a*) of this section;

(*b*) The date of death of the policyholder within the period stated in paragraph (b)(2)(i)(*b*) of this section.

(c) *General.* (1) The term "timely payment of premiums" as used in Public Law 87-223 will include section 621 and section 723(b) insurance where the effective date of reinstatement is during one of the premium months of November 1960, December 1960, or January 1961.

(2) Among other factors, the dividend will be based on the period insurance was in force under section 621 prior to the premium due date in February 1961, except that the period during which premiums were waived under section 622 of the National Service Life Insurance Act or 38 U.S.C. 724 will be excluded.

(3) Dividends payable under the provisions of Public Law 87-223 shall be paid, without interest, in cash to the policyholder, if living. If the policyholder is dead and the insurance matured such dividends shall be paid to the person currently entitled to receive payment under this policy. If the policy is not in force at death any such unpaid dividends shall be paid to the insured's estate. (Instruction 1, Pub. L. 87-223)

[26 FR 9993, Oct. 25, 1961]

§ 8.186 National Service Life Insurance premium refunds—Philippine veterans.

(a) *Provisions of the law.* Section 1 of Public Law 89-641 provides for the refund of National Service Life Insurance premiums erroneously deducted from arrears in pay of members of the organized military forces of the Philip-

pine Commonwealth Army ordered into the service of the Armed Forces of the United States. The basic provisions of the law as implemented by this issue are:

(1) An application for the refund must be made within 2 years from the date of enactment.

(2) The application must be filed with the Government of the Republic of the Philippines, the Philippine Panel, Joint RP—U.S. Veterans Commission.

(3) An appropriate official of the Philippine Government will certify those claims which are valid according to their records and deny those claims which they deem invalid and for which the Veterans Administration finds there is no entitlement.

(4) All refunds will be made from the National Service Life Insurance appropriation.

(5) If the veteran is deceased, the refund may be made only to the following individuals in the order named:

(i) To the widow or widower of such person, if living;

(ii) If no widow or widower, to the child or children of such person, if living, in equal shares; or

(iii) If no widow, widower, child, or children, to the parent or parents of such person, if living, in equal shares.

(6) No refund will be made to the heirs or legal representatives as such of any veteran or any beneficiary of such veteran.

(7) If the veteran is deceased and no individual within the permitted class survives, no payment will be made.

(8) Applications will be distributed by the Philippine Government.

(9) All refunds will be made in U.S. Dollars at the rate of $1 for each two pesos. This reflects the rate of exchange that existed at the time the deductions were made.

(b) *Entitlement where veteran is deceased.* (1) The term "widow or widower" is defined as the lawful wife or husband of the veteran at the time of death. A subsequent remarriage will not become a bar to entitlement.

(2) The term "child or children" is defined as a legitimate child, a legally adopted child or an illegitimate child; and without regard to age marital status, school attendance or income.

(3) The term "parent or parents" is defined as natural parents only. The refund will be made to them in equal shares, if living; otherwise, all to the survivor; and in either case, without regard to income or dependency. Payment will not be made to any claimant who did not exercise the legal and moral obligations of a parent. In that event, the entire amount will be payable to the remaining parent.

(4) Proof of relationship and death will be established in accordance with the applicable §§ 3.204 through 3.212 of this chapter.

(c) *Types of applications.* VA Form 29-8366(NR), Application for Refund of Erroneous National Service Life Insurance Premium Deduction—Philippine Commonwealth Army Veterans, is provided for use by living Philippine veterans. VA Form 29-8366a(NR), Application for Refund of Erroneous National Service Life Insurance Premium Deduction—Deceased Philippine Commonwealth Army Veterans, is provided for use by eligible relatives of deceased Philippine veterans. (Instruction 1, Pub. L. 89-641)

(80 Stat. 884; 38 U.S.C. 107 note)

[32 FR 923, Jan. 26, 1967]

Part 8a

PART 8a—VETERANS MORTGAGE LIFE INSURANCE

Sec.

8a.1 Definitions.
8a.2 Maximum amount of insurance.
8a.3 Effective date.
8a.4 Coverage.
8a.5 Beneficiaries.
8a.6 Payment of premiums.
8a.7 Termination.

AUTHORITY: 72 Stat. 1114; 85 Stat. 320; 38 U.S.C. 210, 806.

SOURCE: 37 FR 282, Jan. 8, 1972, unless otherwise noted.

§ 8a.1 Definitions.

(a) The term "eligible veteran" means any veteran who is or has been granted assistance in securing a suitable housing unit under chapter 21 of title 38, United States Code, and who has not attained his or her 70th birthday.

(b) The term "grant" means the monetary assistance given to a veteran in acquiring a suitable housing unit under chapter 21 of title 38, United States Code.

(c) The term "housing unit" means a family dwelling or unit, together with the necessary land therefor, that has been or will be purchased, constructed, or remodeled with a grant to meet the needs of an eligible veteran and of his or her family, and is or will be owned and occupied by the eligible veteran as his or her home, or a family dwelling or unit, including the necessary land therefor, acquired by an eligible veteran to be used as his or her residence after selling or otherwise disposing of title to the housing unit for which his or her grant was made.

(d) The term "Veterans Mortgage Life Insurance" means the mortgage protection life insurance authorized for veterans under 38 U.S.C. 806.

(e) The term "initial amount of insurance" means the amount of insurance corresponding in amount to the unpaid principal of a mortgage loan outstanding on a housing unit owned or to be acquired by an eligible veteran on August 11, 1971, or on the date of approval of his or her grant made under chapter 21 of title 38, United States Code, whichever is the later date.

(f) The term "mortgage loan" means any loan, lien, or other indebtedness incurred by an eligible veteran to buy, build, remodel, or enlarge a housing unit, the payment of which loan, lien, or indebtedness is secured by a mortgage lien, or other equivalent security of record, on the housing unit in the usual legal form employed in the community in which the property is situated. The term also includes refinancing of such an indebtedness to avoid a default, to consolidate liens, to renew or extend the time for payment of the indebtedness, and in cases where the housing unit is being bought, built, remodeled, or enlarged by increasing the amount of such an indebtedness.

(g) The term "owned" means the eligible veteran has or will acquire an interest in the housing unit which is:

(1) A fee simple estate, or

(2) A leasehold estate, the unexpired term of which, including renewals at the option of the lessee, is not less than 50 years, or

(3) An interest in a residential unit in a cooperative or a condominium type development which in the judgment of the Chief Benefits Director or the Director, Loan Guaranty Service, provides a right of occupancy for a period of not less than 50 years: *Provided*, The title to such estate or interest is or shall be such as is acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community.

[37 FR 282, Jan. 8, 1972, as amended at 42 FR 43835, Aug. 31, 1977]

§ 8a.2 Maximum amount of insurance.

(a) Effective October 1, 1976, each eligible veteran is authorized a lifetime maximum amount of insurance under section 806 of title 38, United States Code, not to exceed $30,000, to be used as needed for insurance on his or her life during periods he or she is obligated under a mortgage loan. Whenever insurance on the life of an eligible veteran is reduced because of a reduction of the principal of his or her mortgage loan, or in accordance with the amortization schedule of his or her mortgage loan, his or her lifetime maximum of $40,000 is permanently reduced by such an amount, except in the case of a reduction of the principal of the mortgage loan resulting from a sale of the property or a refinancing of the loan.

(b) The maximum amount of insurance in force on any one life at one time shall not exceed the lesser of the following amounts:

(1) $40,000.

(2) The reduced maximum amount of insurance available to an eligible veteran.

(3) Where the grant was approved and fully disbursed prior to August 11, 1971, the amount of the unpaid principal of the mortgage loan outstanding on that date on a housing unit then owned and occupied by the eligible veteran.

(4) Where the grant was approved prior to August 11, 1971, but had not been fully disbursed on that date, the amount of the unpaid principal of the

mortgage loan outstanding on that date on a housing unit then owned and occupied by the eligible veteran, or on a housing unit then in the process of construction or remodeling for the eligible veteran, and such initial amount of insurance may be adjusted upward, subject to the maximum insurance available to the eligible veteran, or downward, depending upon the amount of the mortgage loans outstanding on the date of full disbursement of the grant, or on the date of the final settlement of the purchase, construction, or remodeling agreement, whichever date is the later date.

(5) Where the grant is approved on or after August 11, 1971, the amount of the unpaid principal of the mortgage loan outstanding on the date of approval of the grant on a housing unit then owned and occupied by the eligible veteran, or on a housing unit being or to be constructed or remodeled for the eligible veteran, and such initial amount of insurance may be adjusted upward, subject to the maximum insurance available to the eligible veteran, or downward, depending upon the amount of the mortgage loans outstanding on the date of full disbursement of the grant, or on the date of final settlement of the purchase, construction, or remodeling agreement, whichever date is the later date.

(6) Where an eligible veteran ceases to own the housing unit purchased in part with a grant, or a subsequently acquired housing unit which was subject to a mortgage loan that resulted in his or her life being insured under Veterans Mortgage Life Insurance, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the amount of the unpaid principal outstanding on the mortgage loan on the newly acquired housing unit on the date insurance hereunder is placed in effect.

(7) Where an eligible veteran incurs or refinances a mortgage loan, the amount of the incurred or refinanced mortgage loan.

(8) Where the title to a housing unit is or will be vested in an eligible veteran and his or her spouse, the amount of insurance shall not exceed the principal amount of the outstanding mortgage loans. If title to an undivided interest in a housing unit is or will be vested in a person other than the spouse of an eligible veteran, the amount of Veterans Mortgage Life Insurance on his or her life shall be computed to be such part of the total of the unpaid principal of the loan outstanding on the housing unit as is proportionate to the undivided interest of the veteran in the entire property.

(9) All claims, arising out of the deaths of insured veterans occurring prior to October 1, 1976, shall be subject to the $30,000 lifetime maximum amount of insurance then in effect.

(c) Any eligible veteran who prior to October 1, 1976, was covered by $30,000 Veterans Mortgage Life Insurance and who on that date became eligible to have his or her coverage increased may elect to retain the lesser amount of coverage he or she had in effect prior to that date.

[37 FR 282, Jan. 8, 1972, as amended at 42 FR 43835, Aug. 31, 1977]

§ 8a.3 Effective date.

(a) Where the grant was approved prior to August 11, 1971, Veterans Mortgage Life Insurance shall be effective August 11, 1971, if on that date, the eligible veteran was obligated under a mortgage loan, and any such eligible veteran is automatically insured, unless he or she elects in writing not to be insured, or fails to respond within 60 days after the date a final request is made or mailed to the eligible veteran for information on which his or her premium can be based.

(b) Where the grant is approved on or after August 11, 1971, Veterans Mortgage Life Insurance shall be effective on the date of approval of the grant, if on that date the eligible veteran is obligated under a mortgage loan, and any such eligible veteran is automatically insured, unless he or she elects in writing not to be insured, or fails to respond within 60 days after the date a final request is made or mailed to the eligible veteran for information on which his or her premium can be based.

(c) In any case in which a veteran would have been eligible for Veterans Mortgage Life Insurance on August 11, 1971, or on the date of approval of his or her grant, whichever date is the later date, but such insurance did not become effective because he or she was not obligated under a mortgage loan on that date, or because he or she elected in writing not to be insured, or failed to timely respond to a request for information on which his or her premium could be based, the insurance will be effective on a date agreed upon by the veteran and the Administrator, but only if the veteran files an application in writing with the Veterans' Administration for such insurance, submits evidence that he or she meets the health requirements of the Administrator, together with information on which his or her premiums can be based, and is or becomes obligated under a mortgage loan upon the date agreed upon as the effective date of his or her insurance.

(d) In any case in which an eligible veteran disposes of the housing unit purchased, constructed or remodeled in part with a grant, or a subsequently acquired housing unit, and becomes obligated under a mortgage loan on another housing unit occupied or to be occupied by the eligible veteran, the insurance will be effective upon a date requested by the veteran and agreed to by the Administrator, but only if the eligible veteran files an application for such insurance, submits evidence that he or she meets the health requirements of the Administrator, furnishes information on which his or her premium can be based, and is or becomes obligated under a mortgage loan on the date the insurance is to become effective.

(e) In any case where an eligible veteran insured under Veterans Mortgage Life Insurance, refinances the mortgage loan which is the basis for such insurance on his or her life, any increase in the amount of insurance or any delay in the rate of reduction of insurance will be effective only if the eligible veteran files an application for insurance, submits evidence that he or she meets the health requirements of the Administrator, and furnishes information on which his or her premium can be based.

[42 FR 43835, Aug. 31, 1977]

§ 8a.4 Coverage.

(a) Veterans Mortgage Life Insurance shall provide protection against the death of an eligible veteran insured thereunder, but only if death occurs while such insurance is in force.

(b) The $40,000 lifetime maximum amount of Veterans Mortgage Life Insurance available to an eligible veteran shall be permanently reduced, and the amount of such insurance in force on his or her life at any one time shall be reduced simultaneously: (1) With the reduction in the principal of the mortgage loan, whether or not the mortgage loan is amortized, and (2) in addition, if the mortgage loan is amortized, according to the schedule for the reduction of the principal of the mortgage loan whether or not the scheduled payments are timely made.

(c) If the amount of the mortgage loan exceeds $40,000, or the reduced maximum amount of insurance available to an eligible veteran, whichever amount is the lesser, the amount of insurance in force on the life of the veteran shall remain at a constant level until the principal amount of the mortgage loan which is basis for establishing the amount of insurance is reduced to $40,000, or to the amount of the reduced maximum amount of insurance available to the veteran, at which time the amount of insurance in force on his or her life shall be reduced in accordance with the schedule for the reduction of the principal of the mortgage loan, and whether or not the scheduled payments are timely made.

(d) Subject to the $40,000 lifetime maximum amount of insurance, and to the reduced maximum amount of insurance available to the eligible veteran, he or she is entitled to be insured under Veterans Mortgage Life Insurance or to apply for such insurance as often as he or she becomes obligated under a mortgage loan or a refinanced mortgage loan on a housing unit or a successor housing unit owned and occupied by the eligible veteran. Where a veteran who is not automatically in-

sured under Veterans Mortgage Life Insurance applies for such insurance, he or she shall be required to meet the health standards and other conditions established by the Administrator for such insureds.

[37 FR 282, Jan. 8, 1972, as amended at 42 FR 43836, Aug. 31, 1977]

§ 8a.5 Beneficiaries.

Any amount of Veterans Mortgage Life Insurance in force on the date of death of an eligible veteran shall be paid only to the holder of the mortgage loan. If the Administrator is the holder of the mortgage loan, the insurance proceeds shall be credited to the loan indebtedness and, as appropriate, deposited in either the direct loan or the loan guaranty revolving fund established by section 1823 or 1824 of title 38, respectively. If there is more than one mortgage loan on a housing unit at the time the insurance matures, the proceeds will be payable to the holder of the mortgage loans in the order of the priority of the liens.

§ 8a.6 Payment of premiums.

Premiums for Veterans Mortgage Life Insurance will be established by the Administrator and based on such mortality data as appropriate to cover only the mortality cost of insuring standard lives. If the veteran is receiving compensation or other cash benefits from the Veterans Administration, the necessary premiums will be deducted from such payments. If the veteran is not receiving payments from the Veterans Administration, premiums must be paid directly by the veterans to the insurer.

§ 8a.7 Termination.

Veterans Mortgage Life Insurance shall terminate upon whichever of the following events first occurs:

(a) Satisfaction of the veteran's indebtedness under the mortgage upon which the loan is based.

(b) The veteran's 70th birthday.

(c) Termination of the veteran's ownership of the property securing the mortgage.

(d) Request of the veteran.

(e) Discontinuance of payment of premiums by the veteran.

(f) Discontinuance of the entire insurance contract or agreement.

PART 9—SERVICEMEN'S GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

Sec.

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9.30 Reinsurance formula.
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9.36 Veterans' Group Life Insurance.

AUTHORITY: 72 Stat. 1114, 79 Stat. 880, 84 Stat. 326, 88 Stat. 165 (38 U.S.C. 210), Subchapter III, Chapter 19.

SOURCE: 40 FR 4135, Jan. 28, 1975, unless otherwise noted.

§ 9.1 Definitions.

(a) The term "member" means (1) A person on active duty, active duty for training, or inactive duty training in the uniformed services in a commissioned, warrant, or enlisted rank or grade, or as a cadet or midshipman at the U.S. Military Academy, U.S. Naval Academy, U.S. Air Force Academy, or the U.S. Coast Guard Academy;

(2) A person who volunteers for assignment to the Ready Reserve of a uniformed service and is assigned to a unit or position in which he or she may be required to perform active duty, or active duty for training, and each year will be scheduled to perform at least twelve periods of inactive duty training that is creditable for retirement purposes under chapter 67 of title 10, United States Code;

(3) A person assigned to, or who upon application would be eligible for assignment to, the Retired Reserve of a uniformed service who has not received the first increment of retirement pay or has not yet reached 61 years of age and has completed at least 20 years of satisfactory service creditable for retirement purposes under chapter 67 of title 10, United States Code;

(4) A member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises; and

(5) A person whose coverage is extended after termination of duty under § 9.5(a) or under § 9.7(a) or (b).

(b) The term "active duty" means (1) Full-time duty in the Armed Forces, other than active duty for training;

(2) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service;

(3) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration;

(4) Full-time duty as a cadet or midshipman at the U.S. Military Academy, U.S. Naval Academy, U.S. Air Force Academy, or the U.S. Coast Guard Academy.

(c) The term "Armed Forces" means the U.S. Army, Navy, Air Force, Marine Corps, Coast Guard and the Reserves thereof.

(d) The term "active duty for training" means (1) Full-time duty in the Armed Forces performed by Reserves for training purposes;

(2) Full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service;

(3) Full-time duty as a member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises; and

(4) In the case of members of the Army National Guard or Air National Guard of any State, full-time duty under sections 316, 502, 503, 504, or 505 of title 32, United States Code.

(e) The term "inactive duty training" means (1) Duty (other than full-time duty) prescribed or authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) which duty is scheduled in advance by competent authority to begin at a specific time and place; and

(2) In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) which is scheduled in advance by competent authority to begin at a specific time and place under sections 316, 502, 503, 504, or 505 of title 32, United States Code.

(f) The terms "active duty for training" and "inactive duty training" do not include duty performed as a temporary member of the Coast Guard Reserve, and the term "inactive duty training" does not include (1) work or study performed in connection with correspondence courses; or (2) attendance at an educational institution in an inactive status.

(g) The term "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, including in each instance the corresponding Reserve and Reserve Officers Training Corps, if any, and in the case of the Army, including the Army National Guard and in the case of the Air Force, the Air National Guard. Also included are the commissioned corps of the Public Health Service and its Reserve Corps and the commissioned corps of the National Oceanic and Atmospheric Administration.

(h) The term "policy" means Group Policy No. G-32000, effective September 29, 1965, purchased pursuant to subchapter III of chapter 19, title 38, United States Code, from the insurer, which was executed and attested on December 30, 1965, and amended on May 24, 1974.

(i) The term "insurer" means the commercial life insurance company or companies selected under 38 U.S.C. 766 to provide insurance coverage specified in the policy.

(j) The term "administrative office" means the Office of Servicemen's Group Life Insurance located at 212 Washington Street, Newark, NJ 07102, which is the administrative office established pursuant to 38 U.S.C. 766(b) by the insurer.

(k) The term "reinsurer" means any life insurance company meeting established criteria as set forth in § 9.28 which reinsures a portion of the total amount of insurance covered by the policy and issues individual life insurance policies in accordance with § 9.26.

(l) The term "converter" means any life insurance company meeting criteria set forth in § 9.28 which issues individual life insurance policies in accordance with § 9.26.

(m) The term "coverage" means Servicemen's Group Life Insurance or Veterans' Group Life Insurance payable upon death occurring while the member is insured under the policy.

(n) The term "termination of duty" means (1) In the case of active duty or active duty for training being performed under a call or order that does not specify a period of less than 31 days-discharge, release or separation from such duty.

(2) In the case of other duty—the member's release from his or her obligation to perform any duty in his or her uniformed service (active duty, or active duty for training or inactive duty training) whether arising from limitations included in a contract of enlistment or similar form of obligation or arising from resignation, retirement or other voluntary action by which the obligation to perform such duty ceases.

(o) The term "waive" or "waiver" means an election in writing signed by a member and received by the uniformed service not to be insured under the policy.

(p) The term "break in service" means the situation(s) in which: (1) A member terminates duty or obligation to perform duty in one service and enters on duty or assumes the obligation to perform duty in another uniformed service, regardless of the length of time intervening.

(2) A member reenters on duty or resumes an obligation to perform duty as a Reserve in the same uniformed service and 1 calendar day or more has elapsed following termination of the prior period of duty or obligation to perform duty.

(q) The term "disability" means any type of injury or disease whether mental or physical.

(r) The term "total disability" means any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation. Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the total loss of hearing of both ears, or the organic loss of speech shall be deemed to be total disability. Organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if such loss is caused by organic changes in such organs. Where such loss exists, the fact that some speech can be produced through the use of an artificial appliance or other organs of the body will be disregarded.

(s) The following definitions of the terms widow, widower, child and parent for Servicemen's Group Life Insurance or Veterans' Group Life Insurance purposes apply only to such insurance on the life of an insured member who dies on or after December 15, 1971.

(1) The term "widow" or "widower" means a person who is the lawful spouse of the insured member at the time of his or her death.

(2) The term "child" means a legitimate child, a legally adopted child, an illegitimate child as to the mother, or an illegitimate child as to the alleged father, only if (i) he acknowledged the child in writing signed by him; or (ii) he has been judicially ordered to contribute to the child's support; or (iii) he has been, before his death, judicially decreed to be the father of such child; or (iv) proof of paternity is established by a certified copy of the public record of birth or church record of baptism showing that the insured was the informant and was named as father of the child; or (v) proof of paternity is established from service department or other public records, such as school or welfare agencies, which show that with his knowledge the insured was named as the father of the child.

(3) The term "parent" means a father of a legitimate child, mother of

a legitimate child, father through adoption, mother through adoption, mother of an illegitimate child, and father of an illegitimate child but only if (i) he acknowledged paternity of the child in writing signed by him before the child's death; or (ii) he has been judicially ordered to contribute to the child's support; or (iii) he has been judicially decreed to be the father of such child; or (iv) proof of paternity is established by a certified copy of the public record of birth or church record of baptism showing the claimant was the informant and was named as father of the child; or (v) proof of paternity is established from service department or other public records, such as school, or welfare agencies, which show that with his knowledge the claimant was named as father of the child. No person who abandoned or willfully failed to support a child during his or her minority, or consented to his or her adoption may be recognized as a parent for the purpose of the Servicemen's Group Life Insurance or Veterans' Group Life Insurance program. However, the immediately preceding sentence shall not be applied so as to require duplicate payments in any case in which insurance benefits have been paid prior to receipt by the Office of Servicemen's Group Life Insurance of sufficient evidence to clearly establish that the person so paid could not qualify as a parent solely by reason of such sentence.

§ 9.2 Effective date.

(a) The effective date of Servicemen's Group Life Insurance coverage for each member then on active duty, active duty for training, or inactive duty training is May 24, 1974. The date is controlled by the local standard time of the member's then physical location.

(b) The effective date of Servicemen's Group Life Insurance coverage for each member entering on active duty, active duty for training, or inactive duty training after May 24, 1974, is the first day of such duty unless the member has elected in writing not to be covered.

(c) The effective date of Servicemen's Group Life Insurance coverage for members assigned to, or who upon application would be eligible for assignment to the Retired Reserve of a uniformed service, who have not received the first increment of retirement pay, or have not reached 61 years of age and have completed at least 20 years of satisfactory service creditable for retirement purposes under chapter 67 of title 10, shall be the date the initial premium, or acceptable application, if required, is mailed or otherwise delivered to the administrative office. The coverage will not be effective in any event prior to the 121st day after the member's separation or release from assignment in the Ready Reserves or if coverage is extended because of total disability, 1 year after such separation or release, or the end of the total disability whichever is the earlier date.

(d) The effective date of Veterans' Group Life Insurance will be as follows:

(1) For those members separated or released on or after August 1, 1974, from a period of active duty or active duty for training under a call or order which does not specify a period of less than 31 days, the 121st day after such separation or release provided the initial premium is mailed or otherwise delivered to the administrative office on or before the 120th day after separation or release for such duty. If coverage is extended because of total disability under § 9.7, the effective date will be 1 year after the date of such separation or release or the end of the total disability, whichever is the earlier date.

(2) For the members separated or released from a period of active duty or active duty for training under a call or order that specifies a period of less than 31 days, or a period of inactive duty for training and during such period of duty suffered an injury or disability which renders them uninsurable at standard premium rates, the coverage will be effective the 121st day after such separation or release provided the initial premium and proof of disability is submitted before the 120th day after such release or separation.

(3) For those members separated or released from a period of duty prior to

August 1, 1974, which gave the member a conversion privilege, the coverage will be effective the date the initial premium, application and proof of good health is mailed or otherwise submitted to the administrative office.

(4) The effective date for Servicemen's Group Life Insurance and Veterans' Group Life Insurance in all cases not covered by paragraph (d) (1) or (2) of this section shall be the date an acceptable application and premium are submitted or otherwise mailed to the administrative office.

§ 9.3 Applications.

(a) Members who met the requirements for full-time coverage under § 9.1(a)(3), as of May 24, 1974, are eligible to be insured for Servicemen's Group Life Insurance upon payment of the initial premium to the administrative office provided such premium is submitted prior to June 1, 1975. On and after June 1, 1975, the member is eligible for coverage provided an application, evidence of insurability and the initial premium is submitted to the administrative office prior to June 1, 1976.

(b) Members who have full-time coverage under § 9.1(a)(2) and qualify for coverage under § 9.1(a)(3) may continue such coverage after separation or release from this reserve obligation upon payment of the initial premium within 120 days after such release to the administrative office. If coverage is continued under § 9.7(a) the initial premium should be submitted within 1 year after such release. Any member who is not entitled to full-time coverage under § 9.1(a)(2) but qualifies for coverage under § 9.1(a)(3) after May 24, 1974, is eligible for such coverage provided the initial premium is submitted to the administrative office within 120 days after becoming so qualified. If the initial premium is not submitted within the time limits set forth in this paragraph, the coverage may be granted provided an application, evidence of insurability and the initial premium are submitted within 1 year after the member's Servicemen's Group Life Insurance coverage is terminated or he or she qualifies for such coverage.

(c) A member separated or released from active duty or active duty for training under a call or order which did not specify a period of less than 31 days is eligible to be granted Veterans' Group Life Insurance in an amount not to exceed his or her Servicemen's Group Life Insurance provided the initial premium is submitted to the administrative office within 120 days of such separation or release, or 1 year if the requirements of § 9.7 are met. If the initial premium is not submitted within the time limits set forth in this paragraph, the member may be granted Veterans' Group Life Insurance provided an application, the initial premium and evidence of insurability is submitted within 1 year after the member's Servicemen's Group Life Insurance coverage is terminated.

(d) A member who, while performing active duty or active duty for training under a call or order specifying a period of less than 31 days, or inactive duty for training scheduled in advance by competent authority including travel directly to or from any such duty, suffers an injury or disability or aggravation of a preexisting disability or injury that renders the member uninsurable at standard premium rates, may be granted Veterans' Group Life Insurance provided the initial premium and proof of such injury or disability is submitted to the administrative office within 120 days after such training is terminated.

§ 9.4 Amount of insurance.

Effective May 24, 1974, Servicemen's Group Life Insurance is issued in the amount of $20,000 unless the insured member elects in writing (a) not to be insured or (b) to be insured in the amount of $15,000, $10,000, or $5,000. The $20,000 coverage does not apply to those members separated or released prior to May 24, 1974, except for those members eligible for coverage under § 9.1(a)(3).

§ 9.5 Coverage.

(a) *Full-time coverage.* For a member performing active duty or active duty for training under a call or order which does not specify a period of less than 31 days, or a member who meets

the requirements of § 9.1(a) (2) or (3), coverage is effective during the period of such duty or status, and except for those members who qualify under § 9.1(a)(3), for 120 days following separation or release from such duty, or up to 1 year if the requirements of § 9.7(a) are met.

(b) *Part-time coverage.* (1) For a member who does not qualify for full-time coverage performing active duty or active duty for training under a call or order that specifies a period of less than 31 days, coverage is in effect from the first day of such duty through midnight local time of the last day of such duty; and, if the member is disabled, coverage may be extended for 120 days under § 9.7(b).

(2) For a member who does not qualify for full-time coverage performing inactive duty training, coverage is in effect from the beginning of the scheduled training period through the end of the scheduled training period; and, if the member is disabled, coverage may be extended for 120 days under § 9.7(b).

(3) A member not eligible for full-time coverage who, when authorized or required by competent authority, assumes an obligation to perform (for less than 31 days) active duty, or active duty for training, or inactive duty training scheduled in advance by competent authority and who is rendered uninsurable at standard premium rates according to good health standards approved by the Administrator, or dies within 120 days thereafter, from a disability, or aggravation of a preexisting disability, incurred by the member while proceeding directly to or returning directly from such active duty, active duty for training, or inactive duty training, as the case may be, shall be deemed to have been on active duty, active duty for training, or inactive duty training, as the case may be; and to have been insured at the time such disability was incurred or aggravated, and if death occurs within 120 days thereafter as a result of such disability, to have been insured at the time of death. In determining whether or not such individual was so authorized or required to perform such duty, and whether or not the member was rendered uninsurable or died within 120 days thereafter from a disability incurred or aggravated, there shall be taken into account the call or order to duty, the orders and authorizations of competent authority, the hour on which the member began to so proceed or to return, the hour on which he or she was scheduled to arrive for, or on which he or she ceased to perform such duty, the method of travel employed, his or her itinerary, the manner in which the travel was performed, and the immediate cause of disability or death. Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of 38 U.S.C. 767(b), the burden of proof shall be on the claimant.

(c) *Arrest or confinement.* Arrest or confinement of a member covered under paragraph (a) of this section by military or civil authority does not terminate coverage, except as specified in § 9.24(a).

(d) *Members in missing status.* With respect to an individual carried in a missing status by a uniformed service and found to have died while in such missing status, the date of the member's death for purposes of coverage and the amount thereof shall be established as follows:

(1) If the member was in a missing status on September 29, 1965, and is determined to have died by the uniformed service prior to June 25, 1970, the date of death shall be that date determined by the Secretary concerned for ending the crediting of pay and allowances as provided in 37 U.S.C. 555.

(2) If a member was in a missing status on June 25, 1970, and is determined to have died, the date of death shall be that date determined by the Secretary concerned for ending the crediting of pay and allowances as provided in 37 U.S.C. 555.

(3) Insurance in force on the date of death as determined under paragraph (d) (1) and (2) of this section shall not be payable to a beneficiary who as a result of the member's death received a gratuity payment under Pub. L. 89-214 (79 Stat. 880) unless such beneficiary agrees to refund the amount of the gratuity received.

§ 9.6 Waiver or reduction of coverage.

(a) A member may waive his or her right to group coverage or elect to reduce the amount of insurance from $20,000 to $15,000, $10,000 or $5,000 by filing a written notice with his or her uniformed service. In any case where a member's uniformed service receives a waiver or reduction prior to the date any group coverage would become effective, no insurance shall be placed in effect on the lives of those members who waive coverage and those who elect reduced coverage shall be insured for only $15,000, $10,000 or $5,000 as the case may be, from the date coverage becomes effective. A member who is paying premiums directly to the administrative office may reduce his or her coverage by notifying that office.

(b) Full-time coverage, § 9.5(a), in effect before a waiver or reduction is filed will terminate or be reduced at midnight of the last day of the month such notice is received by a member's uniformed service. Where a waiver or reduction is filed for full-time coverage, it is effective for the entire period of active duty or active duty for training and for any period of time after termination of duty during which the coverage is or would be extended. If, following termination of duty, the member reenters duty (in the same or another uniformed service) the waiver or reduction will not apply to the subsequent period of duty. In the case of the member paying premiums direct to the administrative office, the waiver or reduction will be effective as of the end of the premium month for which the last full premium was paid.

(c) Part-time coverage, § 9.5(b) (1) or (2), will terminate or be reduced at the end of the last day of the period of duty then being performed if the member is on active duty or active duty for training when the waiver or reduction is filed; at the end of the period of inactive duty training then being performed if the member is on inactive duty training when the waiver or reduction is filed; or on the date the waiver or reduction is received by his or her uniformed service if the member is not on active duty, active duty for training; or inactive duty training on the date the waiver or reduction is filed.

(1) When a member insured under part-time coverage, § 9.5(b) (1) or (2), waives his or her right to group coverage or elects a reduced amount of insurance, such waiver or election, unless changed, is effective throughout the period of the member's continuous reserve obligation in the same uniformed service. If, following termination of duty, the member reenters duty or resumes the obligation to perform duty (in the same or another uniformed service), the waiver or reduction will not apply to the subsequent period of duty or obligation.

(2) If a reservist insured under part-time coverage, § 9.5(b) (1) or (2), is called or ordered to active duty or active duty for training under a call or order that does not specify a period of less than 31 days and is separated or released from such duty and then resumes his or her reserve obligation, any waiver or election of reduced coverage made while eligible for part-time coverage, unless changed, shall be effective throughout the entire period of part-time coverage, the active duty or active duty for training period and 120 days thereafter and the period of immediately resumed reserve obligation.

(3) If a member, other than a member referred to in paragraph (c)(2) of this section, upon termination of duty qualifying him or her for full-time coverage under § 9.5(a) assumes an obligation to perform duty as a reservist, any waiver or election previously made by the member shall not apply to coverage arising from his or her reservist obligation. Furthermore, during the 120 days following termination of such duty the full-time coverage shall not be reduced by any waiver or election made by a member as a reservist.

§ 9.7 Extension of coverage based on disability.

(a)(1) Coverage of any member of the uniformed services on active duty or active duty for training on or after June 25, 1970, under a call or order to duty that does not specify a period of less than 31 days, or a member as defined under § 9.1(a)(2) on or after May 24, 1974, who is totally disabled at sep-

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aration or release from such duty shall continue for 1 year after the date of separation or release from such duty, or until and including the date the insured ceases to be totally disabled, whichever is the earlier date, without further premium payments, but in no event shall such coverage cease prior to the expiration of 120 days after such separation or release. If a member insured under the provisions of law in effect prior to June 25, 1970, was separated or released from duty on or after February 25, 1970, but before June 25, 1970, and was totally disabled on the date of separation or release from such duty and such total disability continues beyond the 120-day period after separation or release the amount of coverage in effect at the time of separation or release from duty continues for 1 year after the date of separation or release from duty or until and including the date the member ceases to be totally disabled, whichever is earlier.

(2) If a member whose coverage is extended under paragraph (a)(1) of this section converts the group insurance (§ 9.26) to an individual policy which is effective before he or she ceases to be totally disabled or before the end of 1 year following termination of duty, whichever is earlier, and dies while group insurance would be in effect, except for such conversion, the group insurance will be payable, provided the individual policy is surrendered for a return of premiums and without further claim. When there is no such surrender, any amount of group insurance in excess of the amount of the individual policy will be payable.

(b) Coverage of any member on active duty, or active duty for training under a call or order to duty that specifies a period of less than 31 days, or on inactive duty training on or after May 24, 1974, who, while so covered, incurs a disability or aggravation of a preexisting disability, is extended to death if the member dies within 120 days thereafter as the result of such disability, or for 120 days following the end of the duty period during which the disability was incurred or aggravated if such disability renders the member uninsurable at standard premium rates under good health standards referred to in § 9.27.

§ 9.8 Restoration of coverage.

(a) Coverage is automatically restored without evidence of good health when subsequent to termination of all duty in his or her uniformed service, a member reenters on duty (in the same or another uniformed service) even when there is no break in service.

(b) Coverage that has been terminated under § 9.24 because of (1) absence without leave, (2) confinement by civil authorities under a sentence adjudged by a civilian court, or (3) confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowance shall be automatically revived, together with any beneficiary designation for such insurance as of the date the member is restored to active duty with pay or active duty for training with pay.

(c) Subject to approval by the insurer, coverage is restored in the amount applied for ($20,000, $15,000, $10,000 or $5,000) effective the date of receipt of application with evidence of good health by the uniformed service:

(1) For a member who previously waived the rights to be covered or elected to be covered for only $15,000, $10,000 or $5,000; or

(2) For a member who forfeited the right to be covered for one of the offenses listed in § 9.34 but who was restored to duty under conditions which, in effect, result in a remission of sentence.

§ 9.10 Deductions from pay.

(a) During any period in which a member on active duty or active duty for training under a call or order to such duty that does not specify a period of less than 31 days, or a member who qualifies for coverage under § 9.1(a)(2), is insured under a policy of insurance purchased under 38 U.S.C. 766 there shall be deducted each month from his or her basic or other pay until separation or release from such duty an amount (which shall be the same for all such members) determined as the share of the cost attributable to insuring such

member under such policy, less any costs traceable to the extra hazard of such duty in the uniformed service.

(b) During any fiscal year, or portion thereof, that a member is on active duty or active duty for training under a call or order to such duty that specifies a period of less than 31 days, or is authorized or required to perform inactive duty training scheduled in advance by competent authority and is insured under a policy of insurance purchased by the Administrator under 38 U.S.C. 766, the Secretary concerned shall collect from him or her (by deduction from pay or otherwise) an amount (which shall be the same for all such members) determined as the share of the cost attributable to insuring such member under such policy, less any costs traceable to the extra hazard of such duty in the uniformed service.

(c) Any amount not deducted from the basic or other pay of an insured member, or collected from him or her by the Secretary concerned, if not otherwise paid, shall be deducted from the proceeds of any insurance thereafter payable. The initial monthly amount or fiscal year amount to be charged for insurance may be continued from year to year, except that the Administrator may redetermine such monthly or fiscal year amounts from time to time in accordance with experience. No refunds will be made to any member of any amount properly deducted from his or her basic or other pay, or otherwise collected from him or her by the Secretary concerned, to cover the cost of the insurance granted.

(d) Premiums for coverage granted to members who qualify under § 9.1(a)(3) (Retired Reservists) and Veterans' Group Life Insurance are payable directly to the administrative office by the individual insureds.

§ 9.12 Payment for extra hazards.

For each month for which any member is insured under Group Policy No. G-32000 there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Administrator and certified to the Secretary concerned to be the cost of such insurance which is traceable to the extra hazard of duty in the uniformed services. Effective January 1, 1970, such cost shall be determined by the Administrator on the basis of the excess mortality incurred by insured members and former members of the uniformed services above what their mortality would have been under peacetime conditions as such mortality is determined by the Administrator using such methods and data as he shall determine to be reasonable and practicable. The Administrator is authorized to make such adjustments regarding contributions from pay appropriations as may be indicated from actual experience.

§ 9.14 Group life insurance fund.

(a) All amounts deducted from the pay of insured members or otherwise paid and all contributions to cover extra hazard costs made from appropriations of the Departments of Defense; Commerce; Health, Education and Welfare; and Transportation; together with any income derived from dividends or premium rate or extra hazard cost adjustment received from the insurer will be credited directly to a revolving fund in the Treasury of the United States, known as the Servicemen's Group Life Insurance Fund. All premium payments and extra hazard cost contributions on the policy and the administrative cost to the Veterans Administration will be paid directly from such fund.

(b) Administrative cost to the Veterans Administration properly allocable to Servicemen's Group Life Insurance and Veterans' Group Life Insurance will be determined from time to time and the amount representing such cost will be transferred from the Servicemen's Group Life Insurance Fund to the appropriation "General Operating Expenses", Veterans Administration.

§ 9.16 Beneficiaries and options.

(a) A member may designate any person, firm, corporation or legal entity (including the estate of the member), individually or as trustee, as beneficiary.

(b) Any designation of beneficiary or election of optional settlement made by any member insured under Servicemen's Group Life Insurance for full-time coverage or part-time coverage will remain in effect, until properly changed by the member or automatically canceled, under the following rules:

(1) If the insurance terminates following separation or release from all duty in a uniformed service.

(2) If the member enters on duty in another uniformed service.

(3) If the member reenters on duty in the same uniformed service more than 1 calendar day after separation or release from all duty in that uniformed service.

(c) If the member acquires Veterans' Group Life Insurance effective on the day following termination of his or her Servicemen's Group Life Insurance, any beneficiary designation in effect from the Servicemen's Group Life Insurance shall be considered a designation of beneficiary for Veterans' Group Life Insurance but not for more than 60 days after the effective date of the Veterans' Group Life Insurance, unless at the end of the 60-day period, the insured is incompetent in which event such designation may continue in force until the disability is removed but not for more than 5 years after the effective date of such insurance.

(d) Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by the insured and received prior to the death of the insured by his or her uniformed service or if executed during a period of coverage following separation or release from duty under § 9.5(a) or § 9.7 (a) or (b), or for coverage under § 9.1(a)(3) or Veterans' Group Life Insurance by the administrative office.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary.

(f) No change or cancellation of beneficiary or election of optional settlement in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate office as provided in paragraph (d) of this section.

(g) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with his or her uniformed service in effect on May 24, 1974, will be effective with respect to the increased amount of insurance authorized on May 24, 1974, by Pub. L. 93-289 (88 Stat. 165) and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance theretofore in effect.

(h) In any case in which a member separated or released from all obligation to perform duty in a uniformed service reenters on duty after a break in service while covered during the period of protection afforded under § 9.5(a) or § 9.7 (a) or (b) after termination of duty and waives coverage or elects coverage in the amount of $15,000, $10,000 or $5,000, an existing designation of beneficiary or election of optional settlement is not canceled with respect to any amount of insurance not replaced upon such reentry on duty.

(i) The insurance proceeds will be paid to the person or persons surviving the insured member in the following order of precedence:

(1) To the beneficiary or beneficiaries designated (see paragraph (d) of this section).

(2) If there be no such beneficiary, to the widow or widower. Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance or Veterans' Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer;

(3) If none of the above, to the child or children and descendants of deceased children by representation;

(4) If none of the above, to the parents or the survivor of them;

(5) If none of the above, to the executor or administrator of the estate of the insured; or

(6) If none of the above, to other next of kin in accordance with the laws of the State wherein the insured

member was domiciled at date of death.

(j) The insured member may elect in writing that settlement of the insurance proceeds be made either in a lump sum or in 36 equal monthly installments. If no election is made or the member elects that payment be made in a lump sum, the beneficiary may elect at the time of the member's death either mode of settlement. An election to be effective must be received before the member's death by the appropriate office as specified in paragraph (d) of this section.

§ 9.17 Taxation and exemption.

Section 770(g), title 38, United States Code provides that payment of benefits due or to become due under Servicemen's Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to: (a) Collection of amounts not deducted from the member's pay, or collected from the member by the Secretary concerned under 38 U.S.C. 769 (a), (b) levy under subchapter D, chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (c) the taxation of any property purchased in part or wholly out of such payments.

§ 9.18 Payment of proceeds.

(a) Group life insurance benefits will be paid upon receipt of satisfactory proof of death and a valid claim by the Office of Servicemen's Group Life Insurance.

(b) If a person, otherwise entitled to payment of the insurance proceeds, does not make claim therefor within 1 year following the death of the insured, or if payment to such person within such period is prohibited by Federal law or regulation, payment may be made in the order of precedence as set forth in § 9.16(i), as if the person had predeceased the insured. Payment to such person is a bar to recovery by another person.

(c) If, within 2 years after the death of the member, no claim has been made by any person entitled and neither the Veterans Administration nor the Office of Servicemen's Group Life Insurance has received any notice that such a claim will be made, payment may be made to any claimant that may be equitably entitled thereto as determined by the Veterans Administration; and such payment will be a bar to recovery by another person.

(d) If, within 4 years after the death of the member, no payment has been made, and no claim by any person entitled is pending, the amount payable will escheat to the credit of the Servicemen's Group Life Insurance Fund.

(e) If, at the death of the insured member, there survives more than one designated beneficiary, the shares of which had not been specified by the member, such beneficiaries will share equally. All rights and interests of any designated beneficiary are automatically terminated when he or she predeceases the member; and what would otherwise have been the share of the deceased beneficiary will, in the absence of a contrary specification by the member in his or her written designation, be distributed equally among the surviving beneficiaries, or paid in whole to the last such survivor. If there is no surviving designated beneficiary, proceeds will be paid in order of precedence set forth in § 9.16(i).

(f) If proceeds are to be paid in installments, the first installment will be payable as of the date of death. The amount of each installment will be computed so as to include interest on the unpaid balance at the then effective rate.

(g) If, following the death of an insured member who has designated both principal and contingent beneficiaries and elected to have payment made in 36 equal monthly installments, the principal beneficiary dies before all 36 installments have been paid, the remaining installments will be paid as they fall due to the contingent beneficiary. At the death of such a contingent beneficiary, and in other instances of a beneficiary's death, where there is no contingent

beneficiary, the value of any unpaid installments, discounted to the date of his or her death at the same rate used for inclusion of interest in the computation of installments will be paid, without further accrual of interest, in one sum to the estate of the beneficiary or continent beneficiary last receiving payment.

(h) In instances where payment in installments is made at the election of the beneficiary, upon his or her request, the value of such installments as remain unpaid will be discounted to the date of payment at the same rate used for inclusion of interest in the computation of installments and paid to him or her in one sum.

§ 9.20 Assignments.

Servicemen's Group Life Insurance, Veterans' Group Life Insurance and benefits thereunder are not assignable.

§ 9.22 Administrative decisions.

(a) Determinations of the Veterans Administration are conclusive under the policy with respect to the following:

(1) The status of any person being within the term "member" and whether or not he or she is covered at any point of time under the policy including "traveltime" under § 9.5(b)(3) and death within 120 days thereafter from a disability incurred or aggravated while on duty under § 9.7(b).

(2) The fact and date of a member's termination of active duty, or active duty for training, and the fact, date and hours of a member's performance of inactive duty training.

(3) The fact and dates with respect to a member's absence without leave, confinement by civilian authorities under a sentence adjudged by a civil court, or confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowances.

(4) The operation of the forfeiture provision provided in 38 U.S.C. 773 and § 9.34 with respect to any member.

(5) The existence of total disability or insurability at standard premium rates under § 9.7 (a) and (b).

(b) When a determination is required on a claim that a member who waived coverage, or whose coverage was forfeited for one of the offenses listed in § 9.34 was in fact insured, or that a member who elected to be insured in the amount of $5,000, $10,000 or $15,000 was insured for $10,000, $15,000 or $20,000, as the case may be, and there is no record of an application to be insured or to increase the amount of insurance as required by § 9.8(c);

(1) The person making the claim will be required to submit all evidence available concerning the member's actions and intentions with respect to Servicemen's Group Life Insurance or Veterans' Group Life Insurance.

(2) Request will be made to the member's uniformed service and any other likely source of information considered necessary, for whatever evidence in the form of copies of payroll or personnel records, statements of persons having knowledge of the facts, etc., is essential to a decision in the matter.

Based on the evidence obtained, a formal determination will be made as to whether the member involved is deemed to have applied to be insured, or to be insured for $20,000, $15,000 or $10,000 in lieu of $5,000 or no insurance. The determination will include a finding as to the member's health status for insurance purposes based on the evidence available.

(c) In making the determination required under paragraph (b) of this section, the following will be considered:

(1) The possibility that due to widespread geographic distribution, inadequate means of communication and the nature of the group insurance program, members may not be adequately and accurately informed, especially in time of war or military emergency, about the detailed requirements for obtaining insurance protection.

(2) Payroll deductions made without objection by a member, following waiver or termination of coverage, representing premiums for insurance or additional insurance, may, by virtue of continuity or the circumstances surrounding their initiation, be indicative that the member did apply. Such deductions without a formal application of record may be considered as evi-

dence that the member's application was not in proper form or misplaced. They may also be considered as evidence that an application was not made solely because of erroneous or incomplete counseling or absence of counseling on the part of the responsible personnel of the uniformed service.

(d) Questions for determination under this section as well as those involving coverage of groups and classes of members and other questions are properly referable to the Assistant Director for Insurance. Authority to make any determinations required under this section is delegated to the Chief Benefits Director and/or Assistant Director for Insurance.

§ 9.21 Termination of coverage.

(a) The coverage of a member who is serving on active duty, or active duty for training under a call or order that does not specify a period of less than 31 days is terminated at the end of the 31st day of absence without leave; confinement by civilian authorities under sentence adjudged by a civilian court; or confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowances.

(1) A member who, on May 24, 1974, has been so absent or confined for more than 31 days is not covered until and unless he or she is restored to active duty or active duty for training with pay.

(2) The coverage of a member who, on May 24, 1974, has been so absent or confined for less than 31 days terminates at the end of the 31st day of such continuous absence or confinement.

(b) If a member eligible to be insured under full-time coverage, § 9.5(a), on the first day of eligibility, waives in writing all or any part of the insurance, the amount of coverage so waived terminates immediately upon receipt of such written waiver by his or her uniformed service.

(c) In the case of a member insured under full-time coverage, § 9.5(a), who after the first day of eligibility waives in writing all or any part of the insurance, such waiver shall be effective at the end of the last day of the month in which the written waiver is received by his or her uniformed service.

(d) In the case of a member insured under part-time coverage, § 9.5(b) (1) or (2), who waives in writing all or any part of the insurance, such waiver shall be effective as follows:

(1) If such written waiver is submitted to the member's uniformed service at a time of reporting for, or while performing active duty or active duty for training under a call or order to duty specifying a period of less than 31 days; or at the time of reporting for or while performing inactive duty training, the coverage so waived shall terminate at the end of such period of active duty, active duty for training or inactive duty training including travel time while returning directly from such duty.

(2) If such written waiver is submitted to his or her uniformed service by a member at a time other than when reporting for, or performing, active duty or active duty for training under a call or order to duty specifying a period of less than 31 days or inactive duty training, such waived coverage terminates immediately upon receipt by the uniformed service of the member's written waiver.

(e) Coverage of any member, unless continued beyond termination of duty under § 9.5(a) or 9.7 (a) or (b) ceases upon termination of duty.

(f) In the case of a member whose coverage is forfeited under 38 U.S.C. 773, § 9.34, coverage terminates at the end of the day preceding the day on which the act or omission forming the basis for such forfeiture occurred.

(g) In the event of discontinuance of the group policy, coverage terminates at the end of the day preceding the date of the discontinuance of the policy except for those members who are insured under § 9.1(a)(3) or Veterans' Group Life Insurance in which event coverage terminates at the expiration of the day preceding the anniversary of the effective date of such insurance which first occurs, 90 days or more after the discontinuance of the group policy.

§ 9.26 Conversion privilege.

(a) Effective August 1, 1974, an insured member has the right to convert the group coverage to Veterans' Group Life Insurance as follows:

(1) With respect to a member on active duty or active duty for training under a call or order to duty that does not specify a period of less than 31 days, effective the 121st day after separation or release from such duty, or if such insurance is in effect as the result of total disability under § 9.7(a) at the end of such total disability or the 1-year period, whichever occurs earlier.

(2) With respect to a member on active duty or active duty for training under a call or order to duty that specifies a period of less than 31 days, and a member insured during inactive duty training scheduled in advance by competent authority there shall be no right of conversion unless the insurance is continued in force under § 9.7(b) for 120 days following a period of such duty, as the result of a disability incurred or aggravated during such a period of duty, in which event the insurance may be converted effective the day after the end of such 120-day period.

(3) No medical examination may be required of a member insured under full-time coverage, § 9.5(a), who applies for conversion within 120 days of termination of duty. Medical examinations and evidence of qualifying health conditions may be required in any case where a former member alleges that coverage is continued under § 9.7 (a) or (b).

(b) At the termination of Veterans' Group Life Insurance, a member has the right to convert the group coverage to an individual policy of life insurance without disability or other supplementary benefits with one of the eligible participating life insurance companies as follows:

(1) The individual policy to which a member converts must be on a plan currently written by the company selected by the member, except term insurance, in an amount which does not exceed the amount of the member's group coverage at time application for conversion is made, and which does not provide for the payment of any sum less than the face value of the individual policy or for the payment of an additional amount of premiums if the member engages in the military service of the United States. The premium for such individual policy shall be the premium, as determined by the company issuing the policy, applicable to the class of risk (other than health conditions and military service) to which the member belongs and to the form and amount of the individual policy at the member's attained age at date of issue.

(2) Term insurance as excluded by paragraph (b)(1) of this section is any policy which does not provide for cash values. Otherwise, reinsurers or converters who are group insurers may follow their usual group conversion practices in processing conversions. Other reinsurers or converters should refer questions as to the acceptability of any plan to the insurer for resolution on a consistent basis.

(3) Term riders providing level or decreasing insurance for which an additional premium is charged may be attached to an eligible basic conversion policy, but the rider will be excluded from the conversion pool agreement under the policy. Such a rider may in no way affect basic conversion privileges.

(c) The insurer will establish a conversion pool in cooperation with the reinsurers and converters in accordance with the terms of the policy. Its purpose will be to provide for the determination and maintenance of appropriate charges arising from excess mortality under individual conversion policies issued in accordance with this section and provide for the appropriate distribution of the risk of loss due to such excess mortality among the reinsurers and converters.

(d) A member of the Ready Reserve, § 9.1(a)(2), who is insured at the time of his or her separation or release from such status and is eligible to continue his or her Servicemen's Group Life Insurance (§ 9.1(a)(3), may in lieu of continuing such group coverage, convert it to an individual policy in accordance with paragraph (b) of this section. Such conversion must be made within 120 days after such separation

or release or within 1 year if the requirements of § 9.7(a) are met.

§ 9.27 Health standards.

(a) For the purpose of determining if a member who incurred a disability or aggravated a preexisting disability during a period of active duty or active duty for training under a call or order to duty specifying a period of less than 31 days or during a period of inactive duty was rendered uninsurable at standard premium rates, the underwriting criteria used by the insurer in determining good health for persons applying to it for life insurance in amounts not exceeding $20,000 will be used.

(b) For all other purposes of determining if a member meets the necessary health requirements except paragraph (a) of this section, the underwriting criteria used by the insurer in determining good health for group life insurance purposes will be used.

§ 9.28 Criteria for reinsurers and converters.

The following criteria will control eligibility for reinsuring and converting companies:

(a) The company must be a legal reserve life insurance company as classified by the insurance supervisory authorities of the State of domicile. Qualified fraternal organizations are included.

(b) The company must have been in the life insurance business for a continuous period of 5 years prior to October 1, 1965, or the December 31 preceding any redeterminations of the allocations. In the event of a merger, the 5-year requirement may be satisfied by either the surviving company or by one of the absorbed companies. Upon joint application by a subsidiary of a participating company, together with the parent company, the 5-year requirement may be waived provided such parent company owns more than 50 percent of the outstanding stock of the subsidiary and has been a legal reserve life insurance company for a period of 10 years or more.

(c) The company must be licensed to engage in life insurance in at least one State of the United States or the District of Columbia.

(d) The company will not be one:

(1) Certified by the Department of Defense as being under suspension for cause for purpose of allotment or on-base solicitation privileges.

(2) That solicits life insurance applications as conversion or other replacement of Servicemen's Group Life Insurance or Veterans' Group Life Insurance coverage in jurisdictions in which it is not licensed.

(3) That fails to take effective action to correct an improper practice followed by it or its agents within 30 days after written receipt of notice issued by the insurer or the Assistant Director for Insurance. Improper practice includes:

(i) The use for solicitation purposes of lists of names and addresses of former members without obtaining reasonable assurance that such lists have not been obtained contrary to regulations of the Department of Defense or other uniformed service;

(ii) Failure to reveal sources and copies of mailing lists upon proper request or to otherwise cooperate in an authorized investigation of a reported improper practice;

(iii) The use of written or oral representations which may mislead the person addressed as to the true role of the company or its representatives as one of the participating companies;

(iv) The use of written or oral representations which may mislead the person addressed as to rights, privileges, coverage, premiums, or similar matters under Servicemen's Group Life Insurance, Veterans' Group Life Insurance, or any policy issued or proposed to be issued as a conversion or other replacement coverage;

(v) Violation of regulations of a uniformed service concerning solicitation of life insurance; and

(vi) The use of written or oral references to Servicemen's Group Life Insurance, Veterans' Group Life Insurance or conversions of Servicemen's Group Life Insurance or Veterans' Group Life Insurance in connection with the attempted sale of an insurance policy which would not be, in fact, a conversion policy or a policy issued in lieu of a conversion, if those references might lead a person addressed to believe there is a connection

between the policy being sold and coverage under Servicemen's Group Life Insurance, Veterans' Group Life Insurance or a conversion of it.

(e) Each reinsuring and converting company must agree to issue conversion policies to any qualified applicant regardless of race, color, religion, sex, or national origin, under terms and conditions established by the primary insurer.

§ 9.30 Reinsurance formula.

The allocation of insurance to the insurer and each reinsuring company will be based upon the sum of paragraphs (a) and (b) of this section following:

(a) One-half of the exact, or a reasonable estimate of the volume of the company's life insurance in force, at some time between June 30, 1965, and November 15, 1965, on active-duty personnel of the U.S. Armed Forces, paid for by service allotments. The volume of insurance on active-duty personnel written through the medium of Service Membership Associations on an allotment basis is to be included.

(b) An amount of the remaining balance of the total life insurance in force under the policy in proportion to the company's total life insurance in force in the United States on December 31, 1964, where:

The first $100 million in force is counted in full,

The second $100 million in force is counted at 75 percent,

The third $100 million in force is counted at 50 percent,

The fourth $100 million in force is counted at 25 percent,

And any amount above $400 million in force is counted at 5 percent.

(c) The allocation will be redetermined at the beginning of each policy year for the primary insurer and the companies then reinsuring, with the portion as set forth in paragraph (b) of this section based upon the corresponding in force (excluding the Servicemen's Group Life Insurance in force) as of the preceding December 31.

(d) Any life insurance company, which is not initially participating in reinsurance or conversions, but satisfies the criteria set forth in § 9.28, may subsequently apply to the primary insurer to reinsure and convert, or to convert only. The participation of such company will be effective as of the beginning of the policy year following the date on which application is approved by the insurer.

§ 9.32 Actions on the policy.

Servicemen's Group Life Insurance and Veterans' Group Life Insurance will be payable in accordance with the group policy purchased by the Veterans Administration. The Assistant Director for Insurance will furnish the name and address of the insuring company upon written request of a member of the uniformed services or his or her beneficiary. Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligation undertaken by the United States, should be brought against the insurer.

§ 9.34 Forfeiture.

(a) Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces of the United States or refuses to wear the uniform of such force, shall forfeit all rights to Servicemen's Group Life Insurance.

(b) No insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except inflicted by an enemy of the United States.

§ 9.36 Veterans' Group Life Insurance.

Veterans' Group Life Insurance shall be issued under the following rules:

(a) The insurance shall be issued in the amount of $5,000, $10,000, $15,000 or $20,000. No person may carry a combined amount of Servicemen's Group Life Insurance and Veterans' Group Life Insurance in excess of $20,000 at any one time.

(b) The insurance shall:

(1) Provide protection against death;

(2) Be issued on a non-renewable 5-year term basis;

(3) Have no cash, loan, paid-up or extended values;

(4) Except or otherwise provided, lapse for nonpayment of premiums.

(c) Any person insured under Veterans' Group Life Insurance who again becomes insured under Servicemen's Group Life Insurance may within 60 days after becoming so insured convert any or all of his or her Veterans' Group Life Insurance to an individual policy of insurance in accordance with § 9.26.

(d) Any person whose Servicemen's Group Life Insurance was continued in force after his or her termination of duty or discharge from service prior to August 1, 1974, and whose coverage terminated less than 4 years prior to August 1, 1974, shall be eligible for Veterans' Group Life Insurance under the following terms:

(1) An application together with the initial premium must be submitted to the administrative office prior to August 2, 1975.

(2) The applicant must be in good health and furnish evidence of such.

(3) Any disability rated as service-connected by the Veterans Administration will be waived for the purpose of determining good health.

(4) The insurance will be issued in an amount not to exceed the amount of Servicemen's Group Life Insurance the applicant had at the time of separation or discharge less any amount converted to an individual policy.

(5) The insurance will be issued for a period of 5 years less the time elapsing between the termination of the applicant's Servicemen's Group Life Insurance and August 1, 1974.

(6) At the termination of the Veterans' Group Life Insurance the insured may convert the group policy to an individual policy under the terms of § 9.26.

PART 10—ADJUSTED COMPENSATION

ADJUSTED COMPENSATION; GENERAL

Sec.

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AUTHORITY: 72 Stat. 1114; 38 U.S.C. 210. Rights and benefits are continued in effect

by sec. 12(b), 72 Stat. 1264, 38 U.S.C. note prec. Part 1.

SOURCE: 13 FR 7122, Nov. 27, 1948, unless otherwise noted.

ADJUSTED COMPENSATION; GENERAL

§ 10.0 Adjusted service pay entitlements.

A veteran entitled to adjusted service pay is one whose adjusted service credit does not amount to more than $50 as distinguished from a veteran whose adjusted service credit exceeds $50 and who therefore is entitled to an adjusted service certificate.

§ 10.1 Issuance of duplicate adjusted service certificate without bond.

If the veteran named in an adjusted service certificate issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, without bad faith, has not received such certificate, or if prior to receipt by the veteran such certificate was destroyed wholly or in part or was so defaced as to impair its value, or, if after delivery it was partially destroyed or defaced so as to impair its value but can be identified to the satisfaction of the Administrator, a duplicate adjusted service certificate will be issued upon application and a bond of indemnity will not be required: *Provided*, That if the adjusted service certificate was destroyed in part or so defaced as to impair its value, the veteran or person entitled to payment thereon will be required to surrender to the Veterans' Administration the original certificate or so much thereof as may remain.

§ 10.2 Evidence required of loss, destruction or mutilation of adjusted service certificate.

The veteran named in an adjusted service certificate issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, or the person entitled to payment thereon will be required to furnish evidence of the nonreceipt of the adjusted service certificate, or of its receipt in a mutilated or defaced condition, or of the loss or destruction in whole or in part of defacement of the certificate after its receipt, as the case may be. The evidence must be sufficient to establish to the satisfaction of the Administrator that neither the veteran nor the person entitled to payment thereon, or any person for or on their behalf, received the adjusted service certificate, or that at the time of its receipt it was mutilated or defaced to such an extent as to impair its value, or that after receipt of the certificate it was lost or destroyed in whole or in part or defaced, but without bad faith on the part of the veteran, and that every effort has been made to recover the lost certificate. Unless determination is otherwise made by the Administrator the evidence must be in the form of a written statement sworn to by the veteran or person entitled to payment thereon and witnessed by at least two persons who shall state, under oath that they personally know the affiant, that they have read his or her statement and that it is true to the best of their knowledge and belief. These statements should be supplemented by affidavits of any persons having personal knowledge of additional facts and circumstances concerning the matter, and the Administrator may require any additional evidence deemed necessary.

§ 10.3 Issuance of duplicate adjusted service certificate with bond.

An indemnity bond will be required as a prerequisite to the issuance of a duplicate adjusted service certificate in all cases where the certificate was lost after receipt by the veteran, or after receipt by the veteran was defaced or mutilated and cannot be identified to the satisfaction of the Administrator, provided the loss, defacement, or mutilation was without bad faith on the part of the veteran or the person entitled to payment thereon. The bond must be in the manner and form prescribed by the Veterans' Administration and for an amount equal to the face value of the certificate, with surety or sureties residents of the United States and satisfactory to the Administrator, with condition to indemnify and save harmless the United States from any claim on account of such certificate. If the certificate was defaced or mutilated the veteran or person entitled to payment thereon

will be required to surrender to the Veterans' Administration the certificate or so much thereof as may remain.

§ 10.4 Loss, destruction, or mutilation of adjusted service certificate while in possession of Veterans' Administration.

A new adjusted service certificate will be issued without bond in lieu of the certificate which has been lost or destroyed, or has been mutilated, defaced or damaged so as to impair its value, while in possession of the Veterans' Administration.

§ 10.15 Designation of more than one beneficiary under an adjusted service certificate.

A veteran to whom an adjusted service certificate has been issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act may name more than one beneficiary to receive the proceeds of his adjusted service certificate, and may from time to time with the approval of the Administrator change such beneficiaries. The designated beneficiaries shall share equally unless otherwise specified by the veteran. Wherever the word "beneficiary" appears in the law and Veterans' Administration regulations it shall be interpreted to include beneficiaries.

§ 10.16 Conditions requisite for change in designation of beneficiary.

A change of beneficiary of an adjusted service certificate to be valid must be made:

(a) By notice signed by the veteran or his duly authorized agent, and delivered or properly mailed to the Veterans' Administration during the lifetime of the veteran. Such change shall not take effect until approved by the Administrator and after such approval the change shall be deemed to have been made as of the date the veteran signed said written notice and change, whether the veteran be living at the time of said approval or not.

(b) Or by last will and testament of the veteran, duly probated. Such change shall not be effective until received by the Veterans' Administration and approved by the Administrator and after such approval the change shall be deemed to have been made as of the date of death of the veteran: *Provided*, That a change of beneficiary signed subsequent to the date upon which the will was executed and delivered in accordance with paragraph (a) of this section shall if approved in accordance with regulations take precedence over the designation by will.

Provided, however, That any payment made to a beneficiary of record, before notice of change of beneficiary has been received in the Veterans' Administration and approved by the Administrator, shall not be made again to the changed beneficiary.

§ 10.17 Designation of beneficiary subsequent to cancellation of previous designation.

The designation of a beneficiary made subsequent to the cancellation of a previous designation of beneficiary, shall be considered as a change in beneficiary, and shall be subject to the approval of the Administrator and subject to the conditions and requirements respecting change in beneficiary as outlined in § 10.16.

§ 10.18 Approval of application for change of beneficiary heretofore made.

Any application for a change of beneficiary heretofore made may be approved if it meets the requirements set out in §§ 10.16 and 10.17.

§ 10.20 "Demand for payment" certification.

Certification to the execution of "demand for payment" forms appearing on the reverse side of adjusted service certificates issued pursuant to the World War Adjusted Compensation Act, as amended, is required in accordance with instructions printed on said forms. Such certification if made in the United States or possessions will be accepted if made by and bearing the official seal of a United States postmaster, an executive officer of an incorporated bank or trust company, notary public, or any person who is legally authorized to administer oaths in a State, Territory, District of Columbia or in a Federal judicial district of the United States. If the demand for

payment be executed in a foreign country, the same shall be certified by an American consul, a recognized representative of an American embassy or legation or by a person authorized to administer oaths under the laws of the place where execution of demand is made, provided there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that the officer certifying to the execution of the demand for payment was authorized to administer oaths in the place where certification was made.

§ 10.22 Payment to estate of decedent.

Wherever the face value of an adjusted service certificate, issued pursuant to the World War Adjusted Compensation Act, as amended, becomes payable to the estate of any decedent and the amount thereof is not over $500 and an administrator has not been or is not to be appointed, such amount will be paid to such person or persons as would, under the laws of the State of residence of the decedent, be entitled to his personal property in case of intestacy.

§ 10.24 Payment of death claim on lost, destroyed or mutilated adjusted service certificate with bond.

If the veteran named in an adjusted service certificate, issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, is deceased, and if, after receipt by the veteran, the adjusted service certificate was lost, destroyed, or so defaced as to impair its value and cannot be identified to the satisfaction of the Administrator of Veterans' Affairs, the person entitled to payment thereon will be required to furnish an indemnity bond in the manner and form prescribed by the Veterans' Administration and for an amount equal to the face value of the certificate, with surety or sureties residents of the United States and satisfactory to the Administrator of Veterans' Affairs with condition to indemnify and save harmless the United States from any claim on account of such certificate, before payment will be made of the proceeds of the certificate and a duplicate adjusted service certificate will not be issued.

§ 10.25 Payment of death claim on adjusted service certificate without bond.

If the veteran named in the adjusted service certificate, issued pursuant to the provisions of section 501 of the World War Adjusted Compensation Act, is deceased, and if the certificate was lost or destroyed wholly or in part or was so defaced as to impair its value prior to receipt by the veteran, or was partially destroyed or defaced after receipt by the veteran, but can be identified to the satisfaction of the Administrator of Veterans' Affairs, payment will be made of the proceeds of the certificate, a bond of indemnity will not be required, and a duplicate adjusted service certificate will not be issued: *Provided*, The person entitled to payment thereon surrenders the defaced or mutilated certificate or so much thereof as may remain.

§ 10.27 Definitions.

For the purpose of §§ 10.28 to 10.47, the word "act" as used herein refers to the World War Adjusted Compensation Act, as amended; the word "Veteran" refers to that term as defined in section 2 of title I of said act; the word "Director" refers to the Administrator of Veterans' Affairs.

§ 10.28 Proof of death evidence.

Evidence required in establishing proof of death under the act, as amended, shall conform with the requirements set forth in the regulations of the Veterans' Administration.

§ 10.29 Claims for benefits because of elimination of preferred dependent.

A dependent, in subsequent position in the order of preference as defined in section 601 of title VI of the act, as amended, who makes claim for the benefits of the act in consequence of the death of a dependent who made application and who stood in preferential position as defined in section 601 of the act, as amended, shall be required to furnish, in support of such claim, proof of death of said dependent. Proof of death of said dependent shall be in accordance with the re-

quirements for proof of death as outlined in the regulations of Veterans' Administration. A dependent who makes claim for the benefits of the act because of remarriage of a widow who did not make and file application before remarriage shall be required to furnish in support of such claim proof of remarriage of said widow. Proof of remarriage of said widow shall be in accordance with the requirements for proof of marriage as outlined in regulations of the Veterans' Administration.

§ 10.30 Proof of remarriage.

A dependent who is receiving payments under section 601 of title VI of the act, as amended, and who remarries after making and filing application, shall be required to furnish proof of remarriage in accordance with the requirements for proof of remarriage as outlined in regulations of the Veterans' Administration.

§ 10.31 Dependency of mother or father.

Claims of a mother or father for the benefits to which either may be entitled under the World War Adjusted Compensation Act, as amended, shall be supported by a statement of fact of dependency made under oath by the claimant and witnessed by two persons.

§ 10.32 Evidence of dependency.

Evidence of a whole or entire dependency shall not be required. The mother or father shall be considered dependent for the purposes of the act when it is established as a fact that the mother or father of a deceased veteran did not have sufficient means from all sources for a reasonable livelihood at the time of the death of the veteran or at any time thereafter and on or before January 2, 1935. In those cases where because of continued and unexplained absence for seven years the veteran is declared deceased under section 312(a) of the act as amended May 29, 1928, the mother or father shall be considered dependent when it is established that the mother or father did not have sufficient means from all sources for a reasonable livelihood at the beginning of such 7-year period or at any time thereafter and before the expiration of such period.

§ 10.33 Determination of dependency.

A determination of the existence of the alleged dependency will be made upon consideration of all facts relating to dependency, and upon such investigation of such facts as may be warranted. The following facts as existing at the time of the death of the veteran, or at any time thereafter and on or before January 2, 1935, or where it is established that the veteran is deceased as provided in section 312(a), at the beginning of such 7-year period or at any time thereafter and before the expiration of such period, shall be taken into consideration in determining dependency in a given case:

(a) Claimant's age.

(b) Amount contributed to claimant by deceased veteran.

(c) Value of all real and personal property owned by claimant.

(d) Total monthly expenses of the claimant and total monthly income.

(e) The fact that claimant did or did not receive an allotment of pay or allowance during the veteran's military or naval service.

(f) Incapability of self-support by reason of mental or physical defect.

(g) Any other fact or facts pertinent to the determination of dependency.

§ 10.34 Proof of age of dependent mother or father.

The mother or father of a veteran to be entitled to the presumption of dependency within the meaning of section 602(c) or section 312(c) of the act, as amended, shall be required to submit proof of age in accordance with the requirements as set forth in regulations of the Veterans' Administration.

§ 10.35 Claim of mother entitled by reason of unmarried status.

Claim of a mother for the benefits to which she may be entitled by reason of her unmarried status as outlined in section 202(c) or section 312(c)3 of the act, as amended, shall be supported by a statement of fact, under oath, of such status, together with one of the following:

(a) Certified copy of public record of death of the husband.

(b) Certified copy of court record of divorce decree.

§ 10.36 Proof of marital cohabitation under section 602 or section 312 of the act.

In order to prove marital cohabitation within the meaning of that term as used in section 602(a) or section 312(c)1 of the act, as amended, claimant shall be required to establish:

(a) A valid marriage, such marriage to be shown by the best evidence obtainable in accordance with the provisions of regulations of the United States Veterans' Administration.

(b) The fact of living together as man and wife, with such fact to be established by:

(1) Statement of the widow or widower showing that he or she and the veteran lived together as man and wife and also showing the place or places of residence during such marital cohabitation and the approximate time of such residence; or

(2) Statement of two competent persons showing that they personally knew the claimant and veteran and that they had personal knowledge that said claimant and veteran lived together as man and wife and were recognized as such.

(c) The fact that the marital status existed at the time of the death of the veteran or where it is established that the veteran is deceased, as provided in section 312(a)1 of the act, as amended, at the beginning of such 7-year period, such fact to be established by:

(1) Statement by claimant that he or she and the veteran had not been divorced and that there had been no annulment of the marriage.

(2) Statement of claimant that he or she was not remarried at the time of making application.

(3) Statement of two competent persons showing that they personally knew the claimant and the veteran; that they personally knew of the marriage relationship between claimant and veteran; that to the best of their knowledge and belief there had been no divorce and no annulment of the marriage and that claimant was not remarried at the time of making and filing application.

§ 10.37 Claim of widow not living with veteran at time of veteran's death.

If a veteran and widow were not living together at the time of the death of the veteran the widow will be required to establish:

(a) That the living apart was not due to her willful act, and

(b) Actual dependency upon the veteran at the time of his death or at any time thereafter and before January 2, 1935.

(1) A determination of what shall constitute a willful act, as used in section 602(a) of the act, as amended, will be made upon consideration of all facts relating to such act and upon such investigation of such facts as may be deemed warranted. For the purpose of this section, the fact that a veteran lived apart from the widow because of any act by the widow involving desertion or moral turpitude will be construed as the willful act of the widow. Cause of separation and time and duration of separation at the time of the death of the veteran shall be taken into consideration in determining a willful act.

(2) A determination of the existence of actual dependency will be made under the criteria set forth in §§ 10.32 and 10.33 with respect to dependency of a mother or father.

§ 10.38 Proof of age of veteran's child.

A child of a veteran shall be required to submit proof of age in accordance with the requirements set forth in the regulations of the United States Veterans' Administration.

§ 10.39 Mental or physical defect of child.

If claim is made under section 602(b), (2), of title IV of the act as amended, alleging that a child over 18 years of age was incapable of self-support at the death of the veteran or that he became incapable of self-support subsequent to the death of the veteran but on or before January 2, 1935, or that he was incapable of self-support at the disappearance of the veteran or became incapable of self-support after the disappearance of the

veteran and before the expiration of the period of seven years mentioned in section 312(c), (2), of the act, it will be necessary to furnish evidence as to the mental or physical condition of the child at the time it is alleged he became incapable of self-support.

(a) Where incapability of self-support by reason of the mental defect of the child is alleged, the following evidence will be required:

(1) Certified copy of court order or decree declaring the child to be mentally incompetent; or

(2) A report of a licensed physician setting forth all of the facts as to the child's mental condition; or

(3) The affidavit of the person having custody and control of the child, setting forth all of the available information as to the child's mental condition. The affidavit must be substantiated by two competent disinterested persons who shall state that they personally know the child, that they have read the affidavit made by the person having custody and control of the child, and that the information therein set forth is true to the best of their knowledge and belief.

(b) Where incapability of self-support by reason of physical defect of the child is alleged, the following evidence will be required:

(1) Report of a licensed physician setting forth all of the facts as to the child's physical condition; and

(2) Affidavit of the child regarding his physical condition and the affidavits of two competent disinterested persons, who shall state that they personally know the claimant, that they have read his affidavit and that the same is true to the best of their knowledge and belief.

§ 10.40 Payment on account of minor child.

Payments to a minor child shall be made to the legally constituted guardian, curator or conservator, or to the person found by the director to be otherwise legally vested with the care of the child.

§ 10.41 Definition of "child".

The term "child" as used in the regulations in this part includes:

(a) A legitimate child;

(b) A child legally adopted;

(c) A stepchild if a member of the veteran's household at the time of the death of the veteran, or

(d) An illegitimate child but as to the father only if acknowledged in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support or has been judicially decreed to be the putative father of such child.

§ 10.42 Claim of child other than legitimate child.

A claim of a child legally adopted by the veteran upon whose service the claim is based shall be supported by a certified copy of the court record of such adoption. A claim of a stepchild of a veteran shall be supported by an affidavit of his or her legal guardian, stating that at the time of the death of the veteran said stepchild was a member of the veteran's household. The fact, as stated in such affidavit, and the signature of the guardian thereto, shall be attested by the court having jurisdiction over the guardian, or by two competent persons to whom the child was personally known at the time of the death of the veteran. A claim of an illegitimate child of a veteran upon whose service claim is based, shall be supported by:

(a) A statement by the veteran in writing acknowledging his parentage of such child; or

(b) Certified copy of order or decree of a court ordering the veteran to contribute to such child's support; or

(c) Certified copy of a decree of a court holding the veteran to be the putative father of such child.

§ 10.43 Claim by guardian of child of veteran.

A claim made by a legal guardian on behalf of his or her ward, a child of a veteran, shall be supported by an affidavit of said guardian, in the capacity of guardian, setting forth the names, ages, and addresses of all living children of the deceased veteran, or, if there be no living child other than the claimant child, statement of that fact shall be made. The signature of the guardian to such required affidavit shall be attested by the court having

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jurisdiction of the guardian and ward, or by two competent persons to whom the child is personally known.

§ 10.44 Evidence required to support claim of mother or father.

The term "mother" and "father" as referred to in the order of preference as outlined in section 601 of the act, as amended, includes stepmothers, stepfathers, mothers and fathers through adoption, and persons who, for a period of not less than one year, have stood in the place of a mother or father to the veteran at any time prior to the beginning of his service. In addition to the evidence of dependency required from a natural mother or father, a claim of a stepmother or stepfather shall be supported by evidence of marriage to the natural parent of the veteran. This evidence shall be in accordance with the requirements of proof of marriage as set forth in regulations of the United States Veterans' Administration. A claim of a mother or father through adoption shall be supported by a certified copy of the court record of such adoption. A claim by a person who claims to have stood in the place of a mother or father shall be supported by evidence of such relationship satisfactory to the Veterans' Administration. Such evidence shall comprise:

(a) An affidavit of the claimant containing a complete detailed statement of the alleged relationship and

(b) Affidavits of two competent witnesses to whom claimant was personally known at the time of the death of the veteran, said witnesses certifying to the truth of the statement as made by the claimant.

§ 10.45 Definition of "widow".

The term "widow" as used in the regulations in this part includes widower.

§ 10.46 Authentication of statements supporting claims.

All statements, except those of licensed examining physicians under § 10.39 (a)(2) and (b)(1), required by §§ 10.28 to 10.44 shall be subscribed and sworn to before an officer vested with authority to administer oaths, in the place where such statements are made. Signatures executed in foreign countries or places shall be certified by an American consul, a recognized representative of an American consul, a recognized representative of an American embassy or legation or by a person authorized to administer oaths under the laws of the place where such statements are made, provided there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that the officer certifying to the execution of the signature was authorized to administer oaths in the place where certification was made.

§ 10.47 Use of prescribed forms.

Statements required by the regulations in this part should be submitted on forms provided by the United States Veterans' Administration, when conveniently available.

PAYMENTS

§ 10.50 Section 601 and section 603 payments made on first day of calendar quarter.

Cash payments and the first installment of installment payments authorized in sections 601 and 603, respectively of title VI of the World War Adjusted Compensation Act, as amended, will be made as of the first day of the calendar quarter following the finding by the director that the applicant is a dependent entitled to the benefits of the act, but in no case shall any such payments be made before March 1, 1925: *Provided, however,* That payments authorized by section 608 of title VI of the act, as amended, shall be paid in a lump sum to the preferred dependent without reference to payments under section 603 of title VI of the act, as amended.

§ 10.51 Payments to minor child.

Payments to minor child through legal guardian, natural guardian, or self. (See § 10.40.)

§ 10.52 Duplication of payments prohibited.

Duplication of payments shall not be made in case of change of beneficiary. (See § 10.16.)

§ 10.53 Payment on duplicate certificate.

Issuance of duplicate adjusted service certificates and payment of claims based upon lost, destroyed, or mutilated, adjusted service certificates. (See §§ 10.1 to 10.4, 10.24 and 10.25, respectively.)

PART 11—LOANS BY BANKS ON AND PAYMENT OF ADJUSTED SERVICE CERTIFICATES

LOANS BY BANKS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT

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APPLICATION FOR PAYMENT OF ADJUSTED SERVICE CERTIFICATE UNDER THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED (PUB. LAW 120, 68TH CONG.)

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11.130 Where to file applications.

AUTHORITY: 72 Stat. 1114; 38 U.S.C. 210. Rights and benefits are continued in effect by sec. 12(b), 72 Stat. 1264, 38 U.S.C. note prec. Part 1.

LOANS BY BANKS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT

SOURCE: Sections 11.75 to 11.85 appear at 13 FR 7125, Nov. 27, 1948, unless otherwise noted.

§ 11.75 Certificates.

Adjusted service certificates are dated as of the 1st day of the month in which the applications were filed, but no certificates are dated prior to January 1, 1925. Loans on the security of such certificates may be made at any time after the date of the certificate. The fact that a certificate is stamped or marked "duplicate" does not destroy its value as security for a loan.

§ 11.76 To whom loan may be made.

Only the veteran named in the certificate can lawfully obtain a loan on his adjusted service certificate and neither the beneficiary nor any other person than the veteran has any

rights in this respect. The person to whom the loan is made must be known to the lending bank to be the veteran named in the certificate securing such note. The consent of the beneficiary is not required, the act providing that a loan on the security of the certificate may be made "with or without the consent of the beneficiary thereof." Loans may be made to veterans adjudged incompetent only through the guardians of such veterans and pursuant to specific order of the court having jurisdiction. Certified copy of court order must be submitted if note be presented for redemption by the Veterans' Administration.

§ 11.77 By whom loans may be made.

Any national bank or any bank or trust company incorporated under the laws of any State, Territory, possession, or the District of Columbia, hereinafter referred to as any "bank," is authorized to loan to any veteran upon his promissory note secured by his Adjusted Service Certificate any amount not in excess of the loan value of the certificate at the date the loan is made. Each certificate contains on its face a table for determining the loan value of the certificate, but it is provided by amendment to the World War Adjusted Compensation Act dated February 27, 1931, that the loan value of any certificate shall at no time be less than 50 percent of the face value. Upon the making of such loan, the lending bank shall promptly notify the Veterans' Administration of the name of the veteran, the A-number shown immediately after the name, the number of the certificate, the amount, the rate of interest, and date of loan: However, this requirement may be waived by the Administrator of Veterans' Affairs.

§ 11.80 Sale or discount of note by holding bank.

Any bank holding a note secured by an Adjusted Service Certificate may sell the note to any bank authorized to make a loan to a veteran and deliver the certificate to such bank. In case a note secured by an Adjusted Service Certificate is sold or transferred, the bank selling, discounting or rediscounting the note is required by law to notify the veteran promptly by mail at his last known post office address. No Adjusted Service Certificate is negotiable or assignable, or may serve as security for a loan, except as provided in section 502 of the World War Adjusted Compensation Act, as amended. Any negotiation, assignment or loan made in violation of section 502 of the World War Adjusted Compensation Act is void. In case of sale, discount or rediscount by the bank which made the loan, the note or notes should be accompanied by the affidavit required by § 11.85.

§ 11.81 Rediscounts with Federal Reserve Banks.

Upon the endorsement of any bank, which shall be deemed a waiver of demand, notice and protest by such bank as to its own endorsement exclusively, and subject to regulations to be prescribed by the Federal Reserve Board, any such note secured by an Adjusted Service Certificate and held by a bank is made eligible for discount or rediscount by the Federal reserve bank of the Federal reserve district in which such bank is located, whether or not the bank offering the note for discount or rediscount is a member of the Federal Reserve System and whether or not it acquired the note in the first instance from the veteran or acquired it by transfer upon the endorsement of any other bank: *Provided*, That at the time of discount or rediscount such note has a maturity not in excess of 9 months, exclusive of days of grace, and complies in all other respects with the provisions of the law, the regulations of the Federal Reserve Board and the regulations in this part.

§ 11.83 Additional loans by reason of 50 percent loan value.

(a) It will be the policy of the Veterans' Administration to redeem all loans made in accordance with the law and regulations made pursuant thereto, when such loans are made in good faith to the veteran to whom the certificate was issued. If, while his certificate is held by a bank as security for a loan, the veteran applies for the increased loan value authorized by the

amendment to the World War Adjusted Compensation Act dated February 27, 1931, whether or not the loan has matured, the veteran and the bank will be informed fully of the provisions of this section and that the bank may make the loan for the additional amount or, upon request of the veteran, may send the note and certificate to the Administrator of Veterans' Affairs. The Administrator shall, if the loan was legally made, accept such certificate and note, and pay to the bank in full satisfaction of its claim the amount of the unpaid principal due it and the unpaid interest at the rate authorized by the World War Adjusted Compensation Act, as amended, up to the date of the check issued to the bank. If the veteran has not filed application for final settlement of his adjusted service certificate under the provisions of the Adjusted Compensation Payment Act, 1936, and demand is made upon the bank to present the note and certificate for redemption prior to the maturity date of the loan and during the lifetime of the veteran, interest will be payable up to the date the check is issued to the bank, or, if demanded by the bank, up to the maturity date of the loan.

(b) If, however, an application for final settlement is filed and the bank is notified to present the note and certificate to the Administrator and does so within 15 days after the mailing of such notice interest will be payable to the date the check is issued to the bank. If the bank fails to forward the note and certificate within 15 days after the mailing of the notice, interest shall be paid only up to the fifteenth day after the mailing of such notice.

§ 11.84 Redemption because of veteran's death.

If the veteran dies before the maturity of the loan, the amount of the unpaid principal and the unpaid interest shall be immediately due and payable. In such case, or if the veteran dies on the day the loan matures or within six months thereafter, the bank holding the note and certificate shall, upon notice of the death, present them to the Administrator, who shall pay to the bank, in full satisfaction of its claim the amount of the unpaid principal and unpaid interest, at the rate authorized by the World War Adjusted Compensation Act, as amended, accrued up to the date of the check issued to the bank; except that if, prior to the payment, the bank is notified of the death by the Administrator and fails to present the certificate and note to the Administrator within 15 days after the notice such interest shall be paid only up to the fifteenth day after such notice.

§ 11.85 Condition requisite for redemption.

In order to be eligible for redemption by the Veterans' Administration, the note and certificate must be accompanied by an affidavit of a duly authorized officer (the capacity in which the officer serves must be shown) of the lending bank showing that the said bank has not charged or collected, or attempted to charge or collect, directly or indirectly, any fee or other compensation in respect of the loan, or any other loan made by the bank under the provisions of section 502 of the World War Adjusted Compensation Act, except the rate of interest specified in the section of the act cited; that the person who obtained the loan is known to the lending bank to be the person named in the Adjusted Service Certificate; and that notice required by § 11.77 was promptly given. In case the note was sold or discounted by the lending bank, there should be incorporated in the affidavit a statement that the veteran was notified promptly of the transfer by mail to his last known address. In case the note was resold or rediscounted by any other bank, affidavit shall be made by a duly authorized officer of such bank that proper notice of such resale or rediscount was promptly mailed to the veteran at his last known address. The proper execution of the appropriate affidavit on Form 6615 or 6615a will be considered as a compliance with the requirements of this section. A single affidavit setting forth the full particulars may be accepted to cover any number of veterans' notes submitted for redemption at one time. The affidavit must be ex-

ecuted before a judge of the United States court, a United States commissioner, a United States district attorney, a United States marshal, a collector of internal revenue, a collector of customs, a United States postmaster, a clerk of court of record under the seal of the court, an executive officer of an incorporated bank or trust company, under his official designation and the seal of the bank or trust company, or a notary public under his seal, or a diplomatic or consular officer of the United States, under his official seal.

DISPOSITION OF NOTES SECURED BY ADJUSTED CERTIFICATES REDEEMED FROM BANKS BY THE VETERANS' ADMINISTRATION UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED (PUB. LAW 120, 68TH CONG.)

SOURCE: Sections 11.88 to 11.93 appear at 13 FR 7126, Nov. 27, 1948, unless otherwise noted.

§ 11.88 Cancellation of note.

When a veteran's note is redeemed by the Veterans' Administration, the note will be canceled and both the note and certificate will be retained in the files of the Veterans' Administration until such time as settlement is made.

§ 11.89 Notification of veteran.

When a note is redeemed notification will be sent to the veteran at his last known address, advising him that the Veterans' Administration holds his note, and outlining the conditions governing repayment.

§ 11.91 Repayment of loans.

Should the veteran so desire, he may repay the amount due on his note in full or in installments.

§ 11.93 Failure to redeem.

(a) If the veteran fails to redeem his certificate before its maturity there will be deducted from the face value of the certificate the amount of the unpaid principal of the note of the veteran and the unpaid interest thereon through September 30, 1931.

(b) If the veteran failed to redeem his certificate and died prior to January 27, 1936, there will be deducted from the face value of the certificate the amount of the unpaid principal of the veteran's note and the unpaid interest thereon to the date of his death. If the veteran died on or after January 27, 1936, the amount to be deducted when making settlement will be the unpaid principal of the veteran's note and the unpaid interest thereon through September 30, 1931.

VETERANS' ADMINISTRATION LOANS ON ADJUSTED SERVICE CERTIFICATES UNDER SECTION 502 OF THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED

SOURCE: Sections 11.96 to 11.104 appear at 13 FR 7126, Nov. 27, 1948, unless otherwise noted.

§ 11.96 By whom loans may be made.

Loans will be made by the Veterans' Administration, Washington, D.C., to any veteran, upon his promissory note secured by his adjusted service certificate, in any amount in even dollars not less than $10 and not in excess of the loan value of the certificate at the date the loan is made. Each certificate contains on its face a table for determining the loan value of the certificate but at no time is the loan value less than fifty per centum of the face value.

§ 11.99 Identification.

Before a loan is made on an adjusted service certificate, the person applying therefor will be identified as the person entitled to the certificate offered as security. Such identification will be made in accordance with § 11.114.

[19 FR 5086, Aug. 12, 1954]

§ 11.100 Form of note.

The form of note used in making loans secured by adjusted service certificates shall follow Form 1185.

§ 11.102 Term of note.

All loans will be for a period of one year and if not paid will be automatically extended from year to year for periods of one year in the amount of the principal plus interest accrued to the end of the immediately preceding

expired loan year, which total amount shall automatically become a new principal each year provided a loan may be paid off at any time by the payment of principal and accrued interest, but in no event will interest accruing after September 30, 1931, be deducted in final settlement of a certificate except as provided in § 11.93(b).

§ 11.104 Disposition of notes and certificates.

All notes and certificates shall be held in the custody of the Veterans' Administration, Washington, D.C.

Application for Payment of Adjusted Service Certificate Under the Adjusted Compensation Payment Act, 1936 (Pub. Law 425, 74th Cong.)

§ 11.109 Settlement of unmatured adjusted service certificates.

Where an application for final settlement of an adjusted service certificate is received in the Veterans' Administration prior to the maturity date of the certificate, payment will be made under the terms of the Adjusted Compensation Payment Act, 1936. This act provides for payment of the amount due on the certificate, after deducting any unpaid loans with interest through September 30, 1931, in adjusted service bonds. These bonds will be issued by the Treasury Department in denominations of $50, in the name of the veteran only, and will bear interest at the rate of 3 percent per annum from June 15, 1936, to June 15, 1945. Any excess amount not sufficient to purchase a $50 bond will be paid by check.

[19 FR 5087, Aug. 12, 1954]

§ 11.110 Who may make application for final settlement.

A mentally competent veteran to whom an adjusted service certificate has been issued.

(a) A legally appointed guardian of an incompetent veteran. An application submitted by a legally appointed guardian must be accompanied by letters of guardianship showing the fiduciary relationship, provided such papers are not already on file in the Veterans' Administration.

(b) A representative of a physically incapacitated veteran. Where application is made by a representative of a physically incapacitated veteran, the representative must attach a statement describing the veteran's incapacity. The correctness of such statement must be certified by an officer as designated in § 11.114.

(c) A superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under the provision of Public Law No. 373, 72d Congress, may make application for an incompetent adult or minor Indian who is a recognized ward of the Government. The application must be accompanied by a certification from the superintendent or other bonded officer showing: (1) That the said beneficiary is a ward of the Government; (2) that no guardian or other fiduciary has been appointed; (3) that the officer making application has been designated by the Secretary of the Interior in accordance with Public Law No. 373, 72d Congress; (4) that he is properly bonded; and (5) that he will receive, handle, and account for such benefits in accordance with existing law and regulations of the Department of Interior.

(d) A manager of a Veterans' Administration hospital, or a manager or superintendent of a contract hospital or State institution where the veteran is a patient may make application as custodian for the veteran. Such application must be made with the approval of the regional chief attorney.

[19 FR 5087, Aug. 12, 1954]

§ 11.111 Form of application.

Application must be made on Veterans' Administration Adjusted Compensation Form 1701.

[13 FR 7127, Nov. 27, 1948]

§ 11.114 Identification.

Before settlement is made on an adjusted service certificate, the person applying therefor will be identified as the person entitled to the settlement for which an application is made. If made in the United States or possessions, certification will be accepted if made by a United States postmaster or

assistant postmaster over an impression of the post office cancellation stamp; a commissioned officer of the regular establishment of the Army, Navy, or Marine Corps; a member of the United States Senate or the House of Representatives; an officer, over his official title, of a post, chapter, or other comparable unit of an organization recognized under Veterans Regulation No. 10 (38 U.S.C. ch. 12A), or an officer over his official title, of the State or national body of such organization, or any person who is legally authorized to administer oaths in a State, Territory, possession, District of Columbia, or in a Federal judicial district, of the United States. If identification is made in a foreign country, it will be certified by an American consul, a recognized representative of an American Embassy or Legation, or by a person authorized to administer oaths under the laws of the place where identification is made; provided, there be attached to the certificate of such latter officer a proper certification by an accredited official of the State Department of the United States that such officer was authorized to administer oaths in the place where certification was made. A manager of a Veterans' Administration hospital is authorized to identify patients, members, or employees of the hospital over which he has charge. An employee of the Veterans' Administration who has been specifically designated in writing to do so may identify applicants during official hours and on the premises of the Veterans' Administration using for this purpose, if necessary, the official records of the Veterans' Administration. Field station finance employees may not be designated for this purpose.

(a) Fingerprint impressions shall be required on the application and shall be imprinted thereon in the presence of the persons identifying the veteran. In the case of veterans who are mentally incapacitated and application is being executed by a representative of the veteran, the veterans' fingerprints will be obtained if possible. If this cannot be done, as also in the case of an individual whose fingers are all missing, a statement of explanation will be required.

[13 FR 7127, Nov. 27, 1948, as amended at 19 FR 5087, Aug. 12, 1954]

§ 11.115 Where to file application.

The application for final settlement, accompanied by the veteran's adjusted service certificate, unless the certificate is being held in the Veterans' Administration as collateral for a loan, must be forwarded to the Manager, Veterans Benefits Office, Washington, D.C. 20421.

[19 FR 5087, Aug. 12, 1954]

§ 11.116 Death of veteran before final settlement.

If the veteran dies after making application under the Adjusted Compensation Payment Act, 1936, but before it is filed, it may be filed by any person and will be considered valid if found to bear the bona-fide signature of the applicant, discloses an intention to claim benefits under the act, and is filed before the maturity of the certificate and before payment is made to the beneficiary. An application made by the veteran or his legal representative shall evidence his intention to claim the benefits of this act; no other evidence shall be acceptable.

(a) If the veteran's death occurs after the application is filed but before payment is received under this act, or if the application is filed after death occurs but before the maturity of the certificate and before payment is made to the beneficiary under section 501 of the World War Adjusted Compensation Act, as amended, payment under this act shall be made to the estate of the veteran irrespective of any beneficiary designation.

(b) If the veteran dies without filing a valid application under this act, no payment under this act shall be made. In such case, payment of the certificate will be made under the World War Adjusted Compensation Act, as amended, in accordance with § 11.128; however, in making any settlement there shall be deducted from the face value of the certificate the amount of any outstanding loans and so much of the unpaid interest as accrued prior to October 1, 1931.

[19 FR 5087, Aug. 12, 1954]

§ 11.117 Missing applications.

Where the records of the Veterans' Administration show that an application, disclosing an intention to claim the benefits of this act, has been filed and the application cannot be found, such application shall be presumed, in the absence of affirmative evidence to the contrary, to have been valid when originally filed. The determination of the correctness of this assumption shall be made by the Manager, Veterans Benefits Office, Washington, D.C., or his designee.

[19 FR 5087, Aug. 12, 1954]

APPLICATION FOR PAYMENT OF ADJUSTED SERVICE CERTIFICATE UNDER THE WORLD WAR ADJUSTED COMPENSATION ACT, AS AMENDED (PUB. LAW 120, 68TH CONG.)

SOURCE: Sections 11.125 to 11.130 appear at 19 FR 5087, Aug. 12, 1954, unless otherwise noted.

§ 11.125 Settlement of matured adjusted service certificates.

Where an application for final settlement of an adjusted service certificate is received in the Veterans' Administration subsequent to the date of maturity of the certificate, payment will be made under the terms of the World War Adjusted Compensation Act, as amended. This act provides for payment of the face value of the certificate less any outstanding indebtedness for loans obtained on the certificate; however, interest accrued on the loans subsequent to September 30, 1931, and unpaid will be canceled insofar as the veteran is concerned.

§ 11.126 Form of application.

Either demand for payment (Form 1748) of application (Form 1701) may be used by the veteran or his legal representative in applying for final settlement of a matured certificate.

§ 11.127 Identification.

Before payment may be made on the adjusted service certificate, the person applying therefor will be identified as the person entitled to payment for which application is made. Such identification will be accepted if made by an authorized person as stated in § 11.114; also, fingerprint impressions shall be placed in the space provided on the application in accordance with § 11.114(a).

§ 11.128 Veteran dies without having filed application for final settlement.

If the veteran dies without having filed application for final settlement under the Adjusted Compensation Payment Act, 1936, and the certificate has not matured, payment will be made to the last designated beneficiary or, if no beneficiary, to his estate. If the certificate has matured, payment will be made to the veteran's estate regardless of any beneficiary designation. Payment of the amount due on a deceased veteran's certificate will be made only on an approved award based upon receipt in the Veterans' Administration of an application properly executed by the person or persons entitled.

§ 11.129 Form of application for payment of deceased veteran's certificate.

Demand for payment (VA Form 8-582) is the proper form for use in applying for payment of the amount due on a deceased veteran's certificate.

§ 11.130 Where to file applications.

Application for payment of a matured certificate or a deceased veteran's certificate, accompanied by the adjusted service certificate, unless it is held in the Veterans' Administration as collateral for a loan, must be forwarded to the Manager, Veterans Benefits Office, Washington, D.C., 20421.

PART 12—DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS

DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS ON STATION UPON DEATH, OR DISCHARGE, OR UNAUTHORIZED ABSENCE, AND OF FUNDS AND EFFECTS FOUND ON STATION

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DISPOSITION OF PERSONAL FUNDS AND EFFECTS LEFT UPON PREMISES OF THE VETERANS ADMINISTRATION BY NON-VETERAN PATIENTS, EMPLOYEES AND OTHER PERSONS, KNOWN OR UNKNOWN

12.15 Inventory of property.
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12.18 Disposition of funds and effects left by officers and enlisted men on the active list of the Army, Navy or Marine Corps of the United States.

UNDER PUBLIC LAW 382, 77TH CONGRESS, DECEMBER 26, 1941, AMENDING THE ACT OF JUNE 25, 1910 (24 U.S.C. 136)

12.19 Provisions of Public Law 382 (38 U.S.C. 17-17j).
12.20 Posting of notice provisions of Public Law 382.
12.21 Action upon death of veteran.
12.22 Disposition of personal property.
12.23 Recognition of valid claim against the General Post Fund.

OPERATION OF LOST AND FOUND SERVICE

12.24 Operation of lost and found service.

AUTHORITY: 72 Stat. 1114, 1259, as amended; 38 U.S.C. 210, 5210.

DISPOSITION OF VETERAN'S PERSONAL FUNDS AND EFFECTS ON STATION UPON DEATH, OR DISCHARGE, OR UNAUTHORIZED ABSENCE, AND OF FUNDS AND EFFECTS FOUND ON STATION

§ 12.0 Definitions.

(a) As used in respect to the disposition of property of veterans dying at Veterans' Administration hospitals or other field stations, or who are discharged or who elope, or are absent without leave therefrom, and in respect to property found thereat, the term "funds" means all types of United States currency and coin, checks payable to the decedent except checks drawn on the Treasurer of the United States which have never been negotiated, and includes deposits to the credit of the veteran in the account "Personal Funds of Patients," and each competent veteran will be so advised. The term "effects" means and embraces all other property of every description, including insurance policies, certificates of stock, bonds and notes the obligation of the United States or of others, and all other papers of every character except checks drawn on the Treasurer of the United States, as well as clothing, jewelry and other forms of property, or evidences of interest therein. Checks drawn on the Treasurer of the United States which have never been negotiated will be returned to the issuing office for disposition.

(b) "Field stations" as used in §§ 12.1 to 12.13 includes hospitals, centers, domiciliary activities, supply depots, and other offices over which the Veterans Administration has direct and exclusive administrative jurisdiction, and excludes State, county, city, private, and contract hospitals and hospitals or other institutions operated by the United States through agencies other than the Veterans Administration. At institutions other than field stations as herein defined funds or effects as defined in paragraph (a) of this section, except for funds derived from gratuitous benefits under laws administered by the Veterans Administration and deposited by the Veterans Administration in the account Personal Funds of Patients for incompetent veterans, will be disposed of under the laws governing such institutions. In any case where the veteran died intestate without heirs or next of kin his personal property vests in the United States. Disposition of the property will be made in accordance with the provisions of §§ 12.19 to 12.23.

[13 FR 7127, Nov. 27, 1948, as amended at 25 FR 1612, Feb. 25, 1960]

§ 12.1 Designee cases; competent veterans.

(a) Each competent veteran now being cared for or who is hereafter admitted to receive care as such at a Veterans Administration field station,

unless it be detrimental to his health, will be requested and encouraged to designate on the prescribed VA Form 10-P-10, Application for Hospital Treatment or Domiciliary Care, the person to whom he desires the Veterans Administration to deliver his funds and effects in event of death. He may also designate an alternate to whom delivery will be made if the first designee fails or refuses to accept delivery. It should be clearly understood that the delivery of such funds or effects will constitute only a delivery of possession thereof, and such delivery is not intended to affect in any manner the title to such funds or effects or determine the person ultimately entitled to receive same from the person to whom delivery is made (hereinafter in the regulations in this part termed the "designee"). The person designated may not be an employee of the Veterans Administration unless such employee be the wife (or husband), child, grandchild, mother, father, grandmother, grandfather, brother, or sister of the veteran. The veteran may in writing change or revoke such designation at any time. If a veteran becomes incompetent, any designation previously made will become inoperative with respect to those funds deposited by the Veterans Administration in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Veterans Administration. The guardian may change or revoke the existing designation with respect to personal effects and funds derived from other sources.

(b) Veterans will be encouraged to place in the custody of their relatives articles of little or no utility value to them during their period of care at a Veterans' Administration field station, and to retain in their possession only such funds and effects as are actually required and necessary for their immediate convenience.

[13 FR 7128, Nov. 27, 1948, as amended at 25 FR 1612, Feb. 25, 1960]

§ 12.2 Designee cases; incompetent veterans.

(a) An incompetent veteran will not be informed concerning the designation of a person to receive funds or effects; but if he has a guardian the guardian will be requested to make such designation of himself or another person to receive possession of the funds and effects (other than funds deposited by the Veterans Administration in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Veterans Administration) upon the incompetent's death. The guardian will sign the letter designating himself or another person with the veteran's name "By ————, guardian of his estate".

(b) No effort will be made to obtain a designation by or on behalf of an incompetent veteran who has no guardian.

[13 FR 7128, Nov. 27, 1948, as amended at 25 FR 1613, Feb. 25, 1960]

§ 12.3 Deceased veteran's cases.

(a) Immediately upon the death or the absence without leave of any beneficiary at a field station, as defined in § 12.0(b), a survey and inventory of the funds and effects of such beneficiary will be taken in the following manner:

(1) If the death or absence without leave occurred during hospitalization, a complete inventory (VA Form 10-2687, Inventory of Funds and Effects) will be made of all personal effects (including those in the custody of the hospital, jewelry being worn by the deceased person, or jewelry and other effects in pockets of clothing he may have been wearing) and all funds found and moneys on deposit in Personal Funds of Patients. In the case of death of incompetent veterans after November 30, 1959, the inventory will be completed to show separately those funds deposited by the Veterans Administration in Personal Funds of Patients which were derived from gratuitous benefits under laws administered by the Veterans Administration. For purpose of determining the source of funds, expenditures from the account will be considered as having been made from gratuitous benefits, not to exceed the extent of deposits of such benefits. In the event death occurred during other than official working hours, the officer of the day and/or a representative of Nursing Service will

collect and inventory all funds and personal effects on the person of the deceased beneficiary and on the ward, will carefully safeguard such property and, upon completion of the tour of duty, will turn the funds and effects over to the properly designated employees.

(2) If the death or absence without leave occurred while the beneficiary was assigned to a domiciliary section, or while receiving hospitalization and at time of death or absence without leave any effects are in the section, a like inventory will be made by representatives of the Chief, Domiciliary Operations and/or Medical Administration Division.

(3) The inventory report will be executed in triplicate, original and two copies. All will be signed by the employee making the inventory, and disposed of as provided for in pertinent procedural instructions.

(4) Personally owned clothing or other effects (such as tooth brushes, false teeth not containing gold, etc.), which are unserviceable by reason of wear or tear or insanitary condition, and clothing that had been supplied by the Government, will not be included in this inventory; instead, the unserviceable personally owned articles will be listed on a separate list, with their condition briefly described, and their disposition recommended in a separate report to the station head. The station head, if approving this recommendation, will order destruction or utilization in occupational therapy, or as wipe rags, etc., of such unserviceable articles and, when they are so destroyed or utilized, will have entered on the papers the date and nature of the disposition. The completed papers will then be placed in the correspondence file of the beneficiary. Clothing that had been supplied by the Government will be reconditioned if possible and returned to stock for issue to other eligible beneficiaries. When Government-owned clothing cannot be reconditioned it will be disposed of.

(5) When the nearest relative requests that the deceased beneficiary be clad for burial in clothing he personally owned, instead of burial clothing to be supplied under the contract for mortuary services, such request will be honored. A receipt in such cases will be obtained from the undertaker, specifying the articles of clothing so used. Adjustme ' of the undertaker's bill in the case will correspondingly be made.

(6) In accomplishing such inventories, detailed description will be given of items of material value or importance, for example:

Watch—Yellow metal (make, movement, and case number, if available without damage to watch).
Ring—Yellow metal (probably gold-plated or stamped 14-K., setting if any).
Discharge certificate.
Adjusted service certificate (number).
Bonds or stocks (name of company, registered or nonregistered, identifying number, recited par value, if any).
Bank books or other asset evidence (name of bank or other obligor, apparent value, identifying numbers, etc.).
Clothing (brief description and statement of condition). Etc.

(b) Upon completion of the survey and inventory, the effects will be turned over to the designated employee for safekeeping. Any funds found in excess of $100 which apparently were the property of the deceased will be turned over to the details clerk and delivered immediately to the agent cashier, who shall deposit same in the account "Personal Funds of Patients". Unendorsed checks other than Treasury checks and funds not in excess of $100 will be considered personal effects and not funds and will be handled accordingly.

[13 FR 7128, Nov. 27, 1948, as amended at 25 FR 1613, Feb. 25, 1960; 29 FR 17904, Dec. 17, 1964; 36 FR 5911, Mar. 31, 1971]

§ 12.4 Disposition of effects and funds to designee; exceptions.

(a) Upon authorization by the station head or his designated representative, all funds, as defined in § 12.0 (except funds on deposit in Personal Funds of Patients derived from gratuitous benefits under laws administered by the Veterans Administration and deposited by the Veterans Administration where the veteran was incompetent at time of death), and effects will be delivered or sent to the designee of the deceased veteran if request there-

for be made after death and within 90 days following the mailing of notice to such designee (see § 12.9(a)), unless:

(1) The executor or administrator of the estate of the deceased veteran shall have notified the station head or his designated representative of his desire and readiness to receive such funds or effects, in which event the station head or his designated representative will authorize delivery of all funds and effects to such executor or administrator upon receipt of appropriate documentary evidence of his qualifications and in exchange for appropriate receipts, or

(2) An heir capable of inheriting the personal property of the veteran makes claim for the funds and effects prior to delivery to the designee.

(3) Subsequent to the naming of a designee the veteran became incompetent and his guardian revoked such designation, in which event the station head or his designated representative will deliver all funds and effects to his guardian in exchange for appropriate receipts subject to the limitation contained in paragraph (d) of this section, or

(4) Designee was the wife (or husband) of the veteran at the time of designation, and information at the disposal of the field station indicates that she (or he) was thereafter divorced and the veteran was incompetent at or subsequent to the time of divorce, or

(5) Notwithstanding there is a designee, it is probable that title would pass to the United States under the provisions of §§ 12.19 to 12.23 issued pursuant to 38 U.S.C. 3202(e) and 38 U.S.C. 5220(a), or

(6) The station head or his designated representative determines that there is reasonable ground to believe that the transfer of such possession to the designee probably would be contrary to the interests of the person legally entitled to the personal property, or there are any other special circumstances raising a serious doubt as to the propriety of such delivery to the designee.

In any case in which the station head does not deliver the funds and effects, because of the provisions of paragraphs (a)(3), (4), and (5) of this section, he will develop all facts and refer the matter to the Chief Attorney of the regional office having jurisdiction over the area where the hospital is located, for advice as to the disposition which legally should be made of such funds and effects.

(b) When authorized by the station head or his designated representative, the effects will be delivered or shipped to the designee. If shipped at Government expense, the shipment shall be made in the most economical manner but in no case at a cost in excess of $25. If such expenses will exceed $25, the excess amount shall be paid by the consignee to the station head in advance. There will be no obligation on the Government, initially or otherwise, to pay such expenses in excess of $25.

(c) When possession of funds or effects is transferred to a designee, the attention of the designee will again be directed to the fact that possession only has been transferred to him and that such transfer does not of itself affect title thereto and that such designee will be accountable to the owner of said funds and effects under applicable laws.

(d) Upon receipt from the proper Chief Attorney of an appropriate certification that the guardianship was in full force and effect at the time of the veteran's death and that the guardian's bond is adequate, funds (other than funds deposited by the Veterans Administration in Personal Funds of Patients derived from gratuitous benefits under laws administered by the Veterans Administration) and effects of an incompetent veteran may be immediately delivered or sent to such guardian, inasmuch as the guardian had a right to possession, and he will be accountable therefor to the party entitled to receive the decedent's estate. If, however, it appears probable that decedent died without a valid will and left no person surviving entitled to inherit, the funds will not be paid to the former guardian but will be disposed of as provided in § 12.19(a). The effects will be sold, used, or destroyed, at the discretion of the station head or his designated representative.

[25 FR 1613, Feb. 25, 1960, as amended at 29 FR 17904, Dec. 17, 1964]

§ 12.5 Nondesignee cases.

(a) If there exists no designee at the time of death at a hospital, domiciliary, or regional office of a veteran admitted as competent, or the designee fails or refuses to claim the funds and effects as defined in § 12.0(a) within 90 days following the mailing of notice to such designee, the station head will take appropriate action to dispose of the effects to the person or persons legally entitled thereto, i.e., the executor or administrator of the decedent, or, if no notice of such an appointment has been received, to the decedent's widow, child, grandchild, mother, father, grandmother, grandfather, brother, or sister, in the order named. Subject to the applicable provisions of §§ 12.3 and 12.4, such delivery may be made at any time before the sale contemplated by § 12.9 to the designee or other person entitled under the facts of the case. Delivery will be made to the person entitled to priority as prescribed in this paragraph, unless such person waives right to possession, in which event delivery will be to the person, if any, in whose favor such prior entitled person waives right to possession. If the waiver is not in favor of a particular person or class, delivery will be to the person or persons next in order of priority under this paragraph. If in any case there be more than one person in the class entitled to priority, initially or by reason of waiver, delivery will be made only to their joint designated agent (who may, but need not, be one of the class), or to one of such class in his own behalf upon written waiver of all others of the class entitled thereto. The guardian of a minor or incompetent may waive his ward's prior right to possession.

(b) Except where delivery is made to a designee, executor, or administrator, funds of veterans who were competent at time of death will be released to the person or persons who would ultimately be entitled to distribution under the laws of the State of the decedent's domicile. The person or persons entitled may waive in writing his or her right to the funds in favor of another heir or next of kin.

(c) Funds of veterans who were incompetent at time of death occurring after November 30, 1959, if derived from sources other than gratuitous benefits deposited by the Veterans Administration in Personal Funds of Patients under laws administered by the Veterans Administration, will be disposed of in the same manner as for competent veterans.

(d) Funds deposited by the Veterans Administration in Personal Funds of Patients, at any office, for veterans who were incompetent at time of death occurring after November 30, 1959 and which were derived from gratuitous benefits under laws administered by the Veterans Administration, will be paid upon receipt of proper application to the following persons living at the time of settlement, and in the order named: the surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. Any funds derived from gratuitous benefits not disposed of in accordance with this paragraph shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such funds as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses.

(e) No payment shall be made under paragraph (d) of this section unless claim therefor is filed with the Veterans Administration within 5 years after the death of the veteran, except that, if any person so entitled under such regulation is under legal disability at the time of death of the veteran, such 5-year period of limitation shall run from the termination or removal of the legal disability.

[18 FR 1854, Apr. 3, 1953 and 25 FR 1614, Feb. 25, 1960, as amended at 29 FR 17904, Dec. 17, 1964]

§ 12.6 Cases of living veterans.

(a) Except as provided in § 12.8, effects of veterans absent without leave or who have been discharged or have

eloped (and who are not to be returned to the field station) will be disposed of as follows:

(1) To the owner if competent, or if deceased to his administrator or executor or as directed in writing by such owner, or his executor or administrator.

(2) To the guardian of the owner if the latter be incompetent, or if deceased to his administrator or executor, or as directed in writing by such guardian, executor or administrator.

(3) To the incompetent owner if he has no guardian: delivery, however, to the incompetent owner may be withheld and may be made to the person who is caring for such incompetent if, in the judgment of the station head or his designated representative, such delivery is to the incompetent's best interest.

NOTE: The Government will not pay expense of transportation of effects of competent or incompetent veterans discharged, on trail visit, absent without leave, or who have eloped, except that personal effects of a beneficiary discharged or on trail visit, or of a beneficiary being transferred to another facility at Government expense, which are not available at time of discharge, beginning of trail visit, or transfer of the beneficiary, due to the articles being in custody of the Government, may be shipped at Government expense.

(b) Funds of veterans absent without leave or who have been discharged or have eloped (and who are not to be returned to the station) will be disposed of in accordance with the provisions of current Veterans' Administration procedures.

[13 FR 7129, Nov. 27, 1948, as amended at 17 FR 1687, Feb. 26, 1952; 19 FR 9330, Dec. 30, 1954; 29 FR 17904, Dec. 17, 1964]

§ 12.7 Cases not applicable to provisions of §§ 12.0 to 12.6.

The provisions of §§ 12.0 to 12.6 shall be inapplicable to property known to be that of any person dying in or discharged or absent without leave from a Veterans' Administration field station other than a veteran admitted as such to such field station.

[13 FR 7129, Nov. 27, 1948]

§ 12.8 Unclaimed effects of veterans.

(a) In the case of any property of a veteran who was in receipt of hospital or domiciliary care, heretofore or hereafter left at a Veterans' Administration field station, the owner of which is discharged or absent without leave or who has eloped and is not to be returned to a Veterans' Administration field station, or has died after departure therefrom, or in case the whereabouts or identity of any owner of any property thereat be unknown, such property, unless it shall be disposed of under the provisions of §§ 12.4 and 12.6 shall be sold, used, destroyed or otherwise disposed of as the manager or his designated representative shall determine the circumstances in the case may warrant. Any sale of such property shall be conditioned upon the 90-day notice provided in section 6 of the act of June 25, 1938 (38 U.S.C. 5-16e).

(b) If the circumstances are such that retention of any property as is mentioned in paragraph (a) of this section, or of any property of unknown ownership found on the premises would endanger the health or life of patients or others on the premises (by reason of contagion, infection, or otherwise) such property shall be forthwith destroyed on order of the manager or his designated representative, and proper record of the action taken will be made.

(c) If there be no known claimant of any such property and if it may be used at the field station for the benefit of the members or patients for such purposes as the General Post Fund is intended to serve, and if the value is inconsequential, the manager or his designated representative may authorize the retention and use of such property at the field station.

(d) Any such property which is not destroyed or used as provided in paragraphs (b) and (c) of this section shall be sold in the manner provided in §§ 12.9 and 12.10, after notice as therein provided unless, prior to sale, claim be made for any such property by someone legally entitled thereto.

[13 FR 7129, Nov. 27, 1948]

§ 12.9 Rights of designate; sales instruction; transportation charges.

(a) Upon death of a veteran admitted as such to a field station, the Manager or his designated representative will cause notice (Parts I and V of VA Form 10-1171) to be sent to the designate: *Provided, however,* That if the Manager or his designated representative has information of the death of the primary designate, notice shall be sent to the alternate designate and all of the provisions of the regulations in this part respecting the designate will be deemed to apply to the alternate. If the designate is a minor or a person known to be incompetent, delivery of the funds or effects will be made only to the designate's guardian or custodian upon qualification. The right of the designate to receive possession ceases when he refuses to accept delivery or if he fails to respond within 90 days after VA Form 10-1171 was mailed. When the right of a designate ceases, VA Form 10-1171 will be forwarded immediately to the alternate designate, whose rights then become identical with those forfeited by the first designate, and the rights of the alternate designate shall terminate at the expiration of 90 days after the VA Form 10-1171 was mailed to him. Delivery will not be made to a designate until he submits a signed statement to the effect that he understands that the delivery of such funds and effects constitutes a delivery of possession only and that such delivery is not intended to affect in any manner the title thereto. Such notice shall fully identify the decedent and state the fact that he designated the addressee to receive possession of such property; that the right to receive possession thereof does not affect the ownership but that the designate will be responsible for the ultimate disposition thereof to those who, under applicable law, are entitled to the decedent's property; and will request prompt advice as to whether the designate will accept such property and that, if he will, he furnish shipping instructions, upon receipt of which the property will be shipped at the expense of the Government. However, prior to dispatching such notice, it will be definitely determined that the shipping expense will not exceed $25. If such expense will exceed $25, the excess cost will be ascertained, and the notice will include a statement of the amount of such excess shipping cost with request that the amount thereof be remitted at the time shipping instructions are furnished. In estimating the shipping expense, it will be assumed that shipment to the designate will be to the same address as that to which the notice is sent. Each notice, however, shall contain a statement that in no event will the Government pay shipping expense in excess of $25. The notice will include a copy of the inventory of the property which it is proposed to deliver to the designate.

(b) Upon receipt of appropriate shipping instructions the property will be shipped, transportation charges prepaid, by mail, express, or freight as may be appropriate under the circumstances and most economical to the Government. The expense of such shipment, chargeable to the Government, in no case to exceed $25.00, is payable the same as other administrative expenses of the Veterans Administration.

(c) The living owner of any property left or found at a field station will be promptly notified thereof. Except as provided in § 12.6(a), transportation charges on property shipped to a living veteran will not be paid by the Government. In such cases, shipment shall be made as requested by the owner of the property (or his guardian) upon receipt of necessary transportation charges, which will be prepaid, unless the owner requests shipment with charges collect and the carrier will accept such shipment without liability for such charges, contingent or otherwise, upon the Government.

(d) If the designate refuses or, upon the lapse of 90 days, has failed to take possession or request shipment of decedent's property (paragraph (a) of this section), or if 90 days have elapsed after the finding of any property and the owner (known or unknown) has failed to request same, the manager or his designated representative will authorize destruction, use or sale.

(e) If sale of the property is authorized the manager will take necessary

action to ascertain the names and addresses, of the owners; or, in the event of the owner's decease, of his executor or administrator, widow, child, grandchild, mother, father, grandmother, grandfather, brother, or sister.

(f) When in possession of the necessary information the manager will cause proper notice of sale (Form 4-1171) to be mailed. Such notice in all cases shall disclose the identity, if known, of the decedent whose property is to be sold and contain a copy of the inventory of such property. A copy of such notice (Form 4-1171), after Parts I, IV, and V thereof are completed, shall be mailed to the owner, if known, or if deceased to the decedent's executor or administrator, if known, and also to the widow (or widower), child, grandchild, mother, father, grandmother, grandfather, brother and sister, if known. If more than one relative of the degree named is known, copy will be mailed to each. If the owner is living, Parts IV and V only of Form 4-1171 will be completed.

(g) Copy of such notice (Form 4-1171, Parts IV and V) will also be posted by a responsible employee more than 21 years of age at:

(1) The field station where the death occurred or property shall have been found.

(2) The place where property is situated at the time such notice is posted, and

(3) The place where probate notices are posted in the county wherein the sale is to be had.

(h) In addition to showing the name of the owner, if known (alive or deceased), and the inventory of the property to be sold, such notice shall state the hour and day when and the precise place where the sale will occur and that the same will be at public auction for cash upon delivery without warranty, express or implied, and that such sale is pursuant to the act of June 25, 1938 (38 U.S.C. 16-16j); and shall also state that any person legally entitled to said property may claim the same at any time prior to sale thereof and in the event of such claim by a proper person the property will not be sold but will be delivered to the person lawfully entitled thereto. Said notice shall also contain a statement substantially to the effect that if sold the net proceeds of sale may be claimed by the person who is legally entitled at any time within 5 years after the date of notice; or in case of property the ownership of which was not originally known, within 5 years after its finding; otherwise such proceeds will be retained in the General Post Fund subject to disbursement for the purposes of such fund.

(i) The person (or persons) posting said notice of sale (Form 4-1171) shall make appropriate affidavit on a copy thereof as to his action in that respect and the manager or his designated representative will also certify on the same copy as to the persons to whom copies of such notice were mailed and the mailing dates. The copy on which appear the affidavit and certificate as to service of the notice will be retained in the station file pertaining to the disposition of such property.

[13 FR 7129, Nov. 27, 1948, as amended at 15 FR 663, Feb. 7, 1950; 23 FR 5, Jan. 1, 1958]

§ 12.10 Proceeds of sale.

After proper notice as prescribed, sale of any such property which it is proper to sell, will be made by public auction by the manager (or any employee designated by him) at the time and place stated in the notice of sale. The property will be sold to the highest bidder (no employee except member employees of the Veterans' Administration shall purchase any of this property) and forthwith delivered and the amount of the bid collected and deposited to the credit of "General Post Fund, Veterans' Administration." Care will be taken to segregate the property of each owner and separate account will be maintained as to the proceeds of sale thereof. Property not disposed of by public auction will be included in the next sale or will be used or destroyed as the value thereof warrants at the discretion of the manager.

[13 FR 7130, Nov. 27, 1948]

§ 12.12 Miscellaneous provisions.

If it is shown that some person other than the veteran has title to property in a veteran's possession at the time of death, nothing contained in §§ 12.0 to

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12.12 shall be construed as prohibiting delivery of such property to the owner. A life insurance policy may be delivered to the beneficiary therein named if the insured is deceased, notwithstanding the veteran has designated a person to whom possession of his property at the field station is to be transferred. In no case will funds or effects be delivered to a minor, or to an incompetent person other than as provided in § 12.9 (a) and (c), but where any such person is entitled to title or possession delivery may be made to his guardian.

[13 FR 7130, Nov. 27, 1948]

§ 12.13 Posting of notice of the provisions of Public No. 734, 75th Congress (38 U.S.C. 16-16j).

In order that all persons who bring property on premises of the Veterans' Administration may be advised of the existence of the act of June 25, 1938 (38 U.S.C. 16-16j), and that it affects such property, notice thereof (Form 4-1182), shall be permanently posted in at least one prominent place on the premises of each field station where persons are likely to see such notice.

[13 FR 7130, Nov. 27, 1948]

DISPOSITION OF PERSONAL FUNDS AND EFFECTS LEFT UPON PREMISES OF THE VETERANS' ADMINISTRATION BY NON-VETERAN PATIENTS, EMPLOYEES AND OTHER PERSONS, KNOWN OR UNKNOWN

§ 12.15 Inventory of property.

Immediately upon the death at a Veterans' Administration field station of a person who was not admitted as a veteran, or immediately after it is ascertained that any such person has absented himself from such field station, a survey and inventory of the personal funds and effects of such deceased or absent person will be made in the manner prescribed in § 12.3(a).

[13 FR 7130, Nov. 27, 1948]

§ 12.16 Action on inventory and funds.

(a) The manager will dispose of the personal funds and effects as promptly as possible. No expense will be incurred by the Government for shipment of the effects.

(b) In making disposition of funds and effects the manager will release the funds to the owner if living and will release the effects to him or as directed by him, provided that if he is incompetent and has a guardian the funds and effects will be released to such guardian. If the owner is deceased, and left a last will and testament probated under the laws of the place of his last legal domicile or under the laws of the State, territory, insular possession, or dependency, within which the field station may be, the personal property of such decedent situated upon such premises will be released to the executor. If such person left on said premises funds or effects not disposed of by a will probated in accordance with the provisions of this paragraph, such property shall be released to the administrator, if one has been appointed.

(c) In those cases where there is neither an administrator nor an executor the funds and effects will be released to the person entitled to inherit the personal property of the decedent under the intestacy laws of the State where the decedent was last domiciled.

(d) Where disposition of the funds and effects cannot be accomplished under the provisions of paragraphs (b) and (c) of this section, the funds, at the expiration of 90 days will be deposited to the General Post Fund and the effects will be disposed of in accordance with the provisions of §§ 12.8, 12.9, and 12.10.

[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 4726, July 28, 1949]

§ 12.17 Unclaimed effects to be sold.

(a) Personal effects of persons referred to in § 12.15 which remain unclaimed for 90 days after the death or departure of the owner shall be sold in the manner provided by § 12.8. The owner, his personal representative, or next of kin may reclaim any such property upon request therefor at any time prior to the sale.

(b) Any unclaimed funds and the proceeds of any effects sold as unclaimed will be deposited to the General Post Fund subject to be reclaimed within five years after notice of sale, by or on behalf of any person or per-

sons who, if known, would have been entitled to the property prior to the sale.

[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 4726, July 28, 1949]

§ 12.18 Disposition of funds and effects left by officers and enlisted men on the active list of the Army, Navy or Marine Corps of the United States.

(a) The manager will notify the commanding officer of the death or absence of such patient and will deliver to the commanding officer, without expense to the Veterans' Administration, the funds and effects of the deceased or absent officer, or enlisted man procuring a receipt therefor.

(b) If the funds and effects are not delivered to the commanding officer within seven days after the death or absence without leave of an officer, or enlisted man, the funds will be deposited in the Personal Funds of Patients. If not disposed of at the expiration of 90 days after the date of death or absence, the funds will be transferred to the General Post Fund and the effects will be handled in accordance with regulations governing the disposition of unclaimed effects left by veterans. The funds and the proceeds derived from the sale of the personal effects will be paid to the person lawfully entitled thereto, providing claim is made within five years from the date of notice of sale, or in the case of legal disability within five years after termination of legal disability.

[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 4726, July 28, 1949]

UNDER PUBLIC LAW 382, 77TH CONGRESS, DECEMBER 26, 1941, AMENDING THE ACT OF JUNE 25, 1910 (24 U.S.C. 136)

§ 12.19 Provisions of Public Law 382 (38 U.S.C. 17-17j).

(a) Whenever any veteran (admitted as a veteran) shall die in any Veterans' Administration hospital, center, or domiciliary activity or in any Federal, State, or private hospital or other institution, while being furnished care or treatment therein by the Veterans' Administration, without leaving a will and without leaving any spouse, heirs, or next of kin entitled to his personal property, all such property, except funds on deposit in Personal Funds of Patients to the credit of an incompetent beneficiary, derived from payments of compensation, automatic or term insurance, emergency officers' retirement pay or pension, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, subject to claim as elsewhere provided. Funds to the credit of an incompetent beneficiary derived from payments of compensation, automatic or term insurance, emergency officers' retirement pay or pension will be deposited to the credit of the current appropriations provided for the payment of compensation, insurance or pension.

(b) "Personal property" as used in this section shall include cash, funds on deposit in Personal Funds of Patients, bank accounts, certificates of stock, bonds, and notes, the obligation of the United States or of others, money orders, checks, insurance policies the proceeds of which are payable to the veteran or his estate, postal savings certificates, money and choses in action, and all other papers of every character; also clothing, jewelry, and all other forms of personalty, or evidences of interest therein.

[19 FR 9330, Dec. 30, 1954]

§ 12.20 Posting of notice provisions of Public Law 382.

(a) VA Form 10-P-10, Application for Hospital Treatment or Domiciliary Care, includes notice to the applicant that the acceptance of care or treatment by any veteran shall constitute acceptance of the provisions of the act. Similar notice shall be given to each veteran receiving care as of March 26, 1942, by posting notice in a prominent place in each building wherein patients or members are housed. Such notices shall be posted immediately and kept posted.

(b) Since the provisions of the law are applicable to all veterans receiving care at the expense of the Veterans' Administration (whether in contract, Federal, State or private hospital) it shall be the responsibility of the Veterans' Administration officer author-

izing admission of a veteran to other than a Veterans' Administration hospital, center or home, to cause the chief officer of such institution to post in a conspicuous place, in all buildings where veterans are housed, the provisions of § 12.19(a), or if he declines to post such provisions, notify the patients individually and supply a statement from each acknowledging notice. Such provisions supersede in part the provisions of Form 10-P-10, executed prior to March 26, 1942.

[13 FR 7131, Nov. 27, 1948, as amended at 14 FR 243, Jan. 18, 1949]

§ 12.21 Action upon death of veteran.

Upon the death of a veteran at a Veterans' Administration hospital, center, or domiciliary activity while receiving care or treatment therein, and who it is believed leaves no will or heirs or next of kin entitled to his personal property, regardless of whether VA Form 10-P-10, executed by the veteran, names a designee, an inventory of the funds and effects, VA Form 10-2687, will be promptly prepared and supplemented by all information or evidence available as to personal property owned by the veteran in addition to that left at the place of death; similar action will be taken when the death of such a veteran hospitalized by the Veterans' Administration occurs at a contract hospital, Army, Navy, Marine or other hospital. Such inventories and information together with any bank books, stocks, bonds, or other valuable paper as enumerated in § 12.19(b), left in the effects of the veteran, will be delivered to the manager of the Veterans' Administration hospital, center, or domiciliary activity having jurisdiction, for disposition in accordance with existing regulations.

[14 FR 243, Jan. 18, 1949]

§ 12.22 Disposition of personal property.

Any assets heretofore or hereafter accruing to the benefit of the General Post Fund, including stocks, bonds, checks, bank deposits, savings certificates, money orders, and similar assets, will be sold or otherwise converted into cash, except that articles of personal adornment which are obviously of sentimental value shall, if unclaimed, be retained for 5 years from the date of death of the veteran, unless for sanitary or other reasons their retention is deemed unsafe. Possession of effects other than those located on the premises of the Veterans Administration will be obtained, except that if transportation, storage, etc., is involved, determination will be made as to whether expenditure therefor is warranted. Proceeds from the conversion or sale will be deposited to the credit of the General Post Fund. Funds on deposit in Personal Funds of Patients will be transferred to the General Post Fund. Any claims against the estate of the deceased veteran will be adjudicated and paid, if valid.

[33 FR 1073, Jan. 27, 1968]

§ 12.23 Recognition of valid claim against the General Post Fund.

Effective December 26, 1941, the assets of the estate of a veteran theretofore or thereafter deposited to the General Post Fund are subject to the valid claims of creditors presented to the Veterans Administration within 1 year from the date of death or otherwise as provided by any applicable law. Any heir, next of kin, legatee, or other person found to be legally entitled to the personal property of the veteran may claim same within 5 years from the date of the veteran's death. If claimant is under any legal disability (as a minor, incompetent, etc.) at the date of the veteran's death, the 5-year period begins upon the termination of removal of legal disability. Such claims are for settlement by the field station which had originally made the deposit. In the event of doubt as to entitlement or the necessity of legal proceedings to obtain assets for the benefit of the General Post Fund, the case will be referred to the Chief Attorney of jurisdiction for advice and/or appropriate action. Any necessary court costs or expenses will be paid from the appropriation, General Operating Expenses, Veterans Administration.

[33 FR 1073, Jan. 27, 1968]

OPERATION OF LOST AND FOUND SERVICE

§ 12.24 Operation of lost and found service.

Unless maintained by the Public Buildings Service, the lost and found service will be maintained by an employee designated by the Manager to be known as the lost and found custodian. VA Form 3771, Record of Lost or Found Article, will be used for recording articles of any personal property lost or found. Every effort will be made to determine rightful ownership of found articles and to recover items which have been reported lost. Currency, including readily negotiable instruments, found and delivered to the lost and found custodian will not be retained beyond the official closing hour. The currency or negotiable instruments will be delivered to the agent cashier before the close of business. Individuals claiming found articles will furnish complete identification and satisfy the station authority of rightful ownership. Where more than one individual claims ownership the matter will be referred to the Manager for decision. All articles of personal property remaining unclaimed for 90 days or more will be disposed of in accordance with § 12.8.

[21 FR 3875, June 6, 1956]

PART 13—DEPARTMENT OF VETERANS BENEFITS, FIDUCIARY ACTIVITIES

Sec.

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AUTHORITY: 72 Stat. 1114, 1232, as amended, 1237; 38 U.S.C. 210, 3202, 3203, 3311.

§ 13.1 Authority.

The regulations in this part are issued pursuant to 38 U.S.C. 210 to reflect action under 38 U.S.C. 212 and to implement 38 U.S.C. 3101, 3202, 3203, 3311 and 5220. The duties, the delegations of authority, and all actions required of the Veterans Services Officer set forth in §§ 13.1 through 13.111 inclusive, are to be performed under the direction of, and authority vested in, the Director of the field station.

[40 FR 54247, Nov. 21, 1975]

§ 13.2 Field examinations.

(a) *Authority to conduct; generally.* Field personnel in the Office of the

Veterans Services Division and other employees who are qualified and designated by the field station Director are authorized, when assigned, to conduct investigations (field examinations) and examine witnesses upon any matter within the jurisdiction of the Veterans Administration, to take affidavits, to administer oaths and affirmations, to certify copies of public or private documents and to aid claimants in the preparation of claims.

(b) *Scope of field examinations; fiduciary activities.* Field examinations include but are not limited to the following:

(1) Matters involving the administration of estates and the welfare of beneficiaries of the Veterans Administration who are under legal disability or in need of supervision by the Veterans Services Officer.

(2) Matters involving the welfare and needs of dependents of incompetent beneficiaries.

(3) Recovery of amounts due the Government or General Post Fund under laws administered by the Veterans Administration.

[40 FR 54247, Nov. 21, 1975]

§ 13.3 State legislation.

Field station Directors are authorized to cooperate with the affiliated organizations, legislative committees, and through the General Counsel with local and State bar associations, to the end that deficiencies of the State laws relating to Veterans Administration operations may be removed. No action to commit the Veterans Administration regarding any proposed legislation relating to fiduciary matters will be taken without the approval of the Chief Benefits Director or designee.

[40 FR 54247, Nov. 21, 1975]

§ 13.55 Veterans Services Officer to select and appoint or recommend for appointment the person or legal entity to receive Veterans Administration benefits in a fiduciary capacity.

(a) *Authority.* The Veterans Services Officer is authorized to select and appoint (or in the case of a court-appointed fiduciary, to recommend for appointment) the person or legal entity best suited to receive Veterans Administration benefits in a fiduciary capacity for a beneficiary who is mentally ill (incompetent) or under legal disability by reason of minority or court action, and beneficiary's dependents.

(b) *Payees.* Authorized payees include:

(1) The beneficiary (§ 13.56(c));

(2) The beneficiary under supervision (supervised direct payment) (§ 13.56 (a) and (b));

(3) The wife or husband of an incompetent veteran (§ 13.57);

(4) The legal custodian of a beneficiary's Veterans Administration benefits (§ 13.58);

(5) A court-appointed fiduciary of a beneficiary (§ 13.59);

(6) The chief officer of the institution in which the veteran is receiving care and treatment (§ 13.61);

(7) The bonded officer of an Indian reservation (§ 13.62);

(8) A custodian-in-fact of the beneficiary (§ 13.63);

(9) Dependents of the veteran by an apportioned award (§ 13.70).

(c) *Certification.* The Veterans Services Officer's certification is authority to make payments to the designated payee.

[40 FR 54247, Nov. 21, 1975]

§ 13.56 Direct payment.

(a) *Veterans.* Veterans Administration benefits payable to a veteran rated incompetent may be paid directly to the veteran in such amount as the Veterans Services Officer determines the veteran is able to manage with continuing supervision by the Veterans Services Officer, provided a fiduciary is not otherwise required. If it is determined that an amount less than the full entitlement is to be paid, such payment shall be for a limited period of time, generally 6 months, but in no event to exceed 1 year, after which full payment will be made and any funds withheld as a result of this section will be released to the veteran, if not otherwise payable to a fiduciary.

(b) *Other adults.* Veterans Administration benefits payable to an adult beneficiary who has been rated or judicially declared incompetent may be

paid directly to the beneficiary in such amounts as the Veterans Services Officer determines the beneficiary is able to mange with continuing supervision by the Veterans Services Officer, provided a fiduciary is not otherwise required. If it is determined that an amount less than the full entitlement is to be paid, such payment shall be for a limited period of time, generally 6 months, but in no event to exceed 1 year, after which full payment will be made and any funds withheld as a result of this section will be released to the beneficiary, if not otherwise payable to a fiduciary.

(c) *Minors.* Veterans Administration benefits payable to a minor:

(1) May be paid direct when:

(i) Arising in connection with a program of education or training under 38 U.S.C. ch. 35.

(ii) The Veterans Services Officer determines it would be in the minor's best interests.

(2) Will be paid direct when:

(i) The beneficiary's only legal disability is minority and he or she is in active military, naval, or air service, or the widow or widower of a veteran.

(ii) The minor is deemed otherwise emancipated under State law.

[40 FR 54247, Nov. 21, 1975, as amended at 42 FR 34282, July 5, 1977]

§ 13.57 Payment to the wife or husband of incompetent veteran.

Compensation, pension or emergency officers' retirement pay of a veteran rated or judicially declared incompetent, may be paid to the veteran's spouse, provided the spouse is qualified to administer the funds payable and agrees to use the amounts paid for the veteran and the veteran's dependents, if any.

[40 FR 54247, Nov. 21, 1975]

§ 13.58 Legal custodian.

(a) *Authority.* The Veterans Services Officer is authorized to make determinations as to the person or legal entity to be appointed legal custodian to receive Veterans Administration payments on behalf of a beneficiary who is incompetent or under legal disability by reason of minority or court action. In the absence of special circumstances, the person or legal entity to be appointed legal custodian will be the person or legal entity caring for and/or having custody of the beneficiary or the beneficiary's estate.

(b) *Payment to.* Veterans Administration benefits may be paid to a legal custodian subject to the following conditions:

(1) The Veterans Services Officer has determined that it would be in the best interests of the beneficiary to appoint a legal custodian.

(2) The proposed legal custodian is qualified to administer the benefits payable and will agree to:

(i) Apply the benefits paid for the best interests of the beneficiary,

(ii) Invest surplus funds as provided by Veterans Administration regulations,

(iii) Furnish, upon request, evidence of compliance with agreement as to usage and investment of Veterans Administration benefits, and

(iv) Inform the Veterans Services Officer of any change in the beneficiary's estate or any other circumstances that might affect entitlement or the manner in which payments are to be made.

[40 FR 54247, Nov. 21, 1975]

§ 13.59 Court-appointed fiduciary.

(a) *Payment to.* Any Veterans Administration benefit may be paid to the fiduciary appointed by a State court for a beneficiary who is a minor, or incompetent or under other legal disability adjudged by a court of competent jurisdiction. Formal or informal accountings may be required from such fiduciaries, with or without judicial proceedings.

(b) *Veterans Services Officer's responsibility.* The Veterans Services Officer shall:

(1) Determine and recommend to the District Counsel the person or legal entity best fitted for appointment as State court fiduciary for the particular beneficiary. Necessary legal action will be taken by the District Counsel.

(2) Upon advice from the District Counsel that the fiduciary has been appointed, issue appropriate certifica-

tion thereof so that payment of benefits can be made to such fiduciary.

[40 FR 54247, Nov. 21, 1975]

§ 13.61 Payment to the chief officer of institution.

The Veterans Services Officer may authorize the payment of all or part of the pension, compensation or emergency officers' retirement pay payable in behalf of a veteran rated incompetent by the Veterans Administration to the chief officer of the institution wherein the veteran is being furnished hospital treatment or institutional, nursing or domiciliary care, for the veteran's use and benefit, when the Veterans Services Officer has determined such payment (called an institutional award) will adequately provide for the needs of the veteran and obviate need for appointment of another type of fiduciary.

[40 FR 54248, Nov. 21, 1975]

§ 13.62 Payment to bonded officer of Indian reservation.

Any benefits due an incompetent adult or minor Indian, who is a recognized ward of the Government, may be awarded to the superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under 25 U.S.C. 14.

[40 FR 54248, Nov. 21, 1975]

§ 13.63 Payment to custodian-in-fact.

All or any part of a benefit due a minor or incompetent adult, payment of which is suspended or withheld because payment may not be properly made to an existing fiduciary, may be paid temporarily to the person having custody and control of the beneficiary.

[36 FR 19023, Sept. 25, 1971]

§ 13.69 Limitation of beneficiaries to individual fiduciary.

For purposes of payment of Veterans Administration benefits, the number of beneficiaries for whom an individual fiduciary may act will be limited to the number the fiduciary may be reasonably expected to properly serve. When, in the judgment of the Veterans Services Officer, a fiduciary has been appointed or is seeking appointment in a case in excess of that number, the Veterans Services Officer will initiate action to obtain a suitable substitute fiduciary.

[40 FR 54248, Nov. 21, 1975]

§ 13.70 Apportionment of benefits to dependents.

(a) *Incompetent veterans being furnished hospital treatment, institutional or domiciliary care by United States or political subdivision thereof.* (1) When compensation, pension or emergency officers' retirement pay is payable in behalf of a veteran who is incompetent or under other legal disability by court action, the Veterans Services Officer may recommend such apportionment to or in behalf of the veteran's wife, husband, child or dependent parent as may be necessary to provide for their needs.

(2) When payment of compensation, pension or emergency officers' retirement pay, in behalf of a veteran rated incompetent by the Veterans Administration by reason of mental illness has no wife, husband or child and is being furnished hospital treatment, institutional or domiciliary care by the United States or a political subdivision thereof, has been stopped because his or her estate equals or exceeds $1,500, the Veterans Services Officer may recommend the payment of so much of the benefit otherwise payable as is necessary to provide for the needs of dependent parent or parents. (See §§ 13.74(b) and 13.108(b).)

(b) *Dependent parents.* When the compensation of a veteran paid to his or her fiduciary includes an additional amount for a dependent parent or parents and the fiduciary neglects or refuses to make an equivalent contribution for their support, the Veterans Services Officer may recommend the apportionment to the parent or parents of the additional amount.

(c) *Payments withheld because of fiduciary's failure to properly administer veteran's estate.* When payments of compensation, pension or emergency officers' retirement pay in behalf of a veteran have been stopped because of the fiduciary's failure or inability to properly account or otherwise administer the estate, the Veterans Services

Officer may recommend the apportionment to the veteran's wife, husband, child or dependent parent of any benefit not paid under an institutional award or to a custodian-in-fact.

[40 FR 54248, Nov. 21, 1975]

§ 13.71 Payment of cost of veteran's maintenance in institution.

(a) *By institutional award.* (1) The payment of part of compensation, pension or emergency officers' retirement pay for the cost of a veteran's hospital treatment, institutional or domiciliary care in an institution operated by a political subdivision of the United States may be authorized as provided in paragraph (a)(2) of this section when:

(i) The veteran is rated incompetent by the Veterans Administration.

(ii) It has been determined the veteran is legally liable for the cost of his or her maintenance, and

(iii) The institution's representative has asserted or probably will assert a claim for full maintenance costs.

(2) Subject to these conditions and the further condition that the responsible official of the institution or political subdivision will agree not to assert against Veterans Administration benefits any further claim for maintenance during the veteran's lifetime, the Veterans Services Officer may agree with such official to the payment of the veteran's benefits through an institutional award to be applied to:

(i) A monthly amount determined by the Veterans Services Officer to be needed for the veteran's personal use,

(ii) An amount to be agreed upon to be accumulated to provide for the veteran's rehabilitation upon release from the institution, and

(iii) So much of the amount of the benefit as remains not exceeding the amount the Veterans Services Officer shall determine to be the proper charge as fixed by statute or administrative regulation, to the cost of the veteran's maintenance.

(3) Upon execution of an agreement as provided in paragraph (a)(2) of this section, the Veterans Services Officer may certify to the Adjudication Division the total amount to be released to the chief officer of the institution.

(b) *By care and maintenance award.* When payment of compensation, pension or emergency officers' retirement pay in behalf of a veteran rated incompetent by the Veterans Administration by reason of mental illness, who has no wife, husband or child and is being furnished hospital treatment, institutional or domiciliary care by a political subdivision of the United States, has been stopped because his or her estate has reached $1,500, the Veterans Services Officer may certify to the Adjudication Division the amount to be released to the responsible official to pay for the cost of the veteran's current care and maintenance. The amounts paid in such cases shall not exceed the amount of the benefit otherwise payable less any amounts apportioned to dependent parents and in no event exceed the amount which the Veterans Services Officer shall determine to be the proper charge as fixed by statute or administrative regulation. (See §§ 13.74(b) and 13.108(b).)

[40 FR 54248, Nov. 21, 1975]

§ 13.72 Release of funds from Personal Funds of Patients.

Veterans Services Officers may authorize release of funds from Personal Funds of Patients for the needs of veterans and their dependents, including amounts fixed by statute or administrative regulations as the cost of current maintenance of veterans in institutions of the United States or a political subdivision thereof other than Veterans Administration institutions.

[40 FR 54248, Nov. 21, 1975]

§ 13.73 Transfer of funds from funds due incompetent beneficiaries.

Veterans Services Officers may, when required for the benefit of the veteran and/or the veteran's dependents, authorize the transfer of amounts credited to veterans in Funds Due Incompetent Beneficiaries to Veterans Administration Personal Funds of Patients accounts or to chief officers of non-Veterans Administration institutions for the accounts of institutionalized veterans.

[40 FR 54248, Nov. 21, 1975]

§ 13.74 Recommendation for payment.

(a) *General.* When veterans' benefits are discontinued under 38 U.S.C. 3203(b)(1), Veterans Services Officers are delegated authority to recommend apportionments or awards in accordance with paragraphs (b) and (c) of this section.

(b) *Needy dependent parent.* If the veteran's estate is $4,000 or more, the Veterans Services Officer may authorize payment from Personal Funds of Patients or recommend payment from the veteran's estate for the needs of the dependent parent and for the care and maintenance of the veteran if hospitalized by the United States or a political subdivision thereof other than a Veterans Administration institution. If the estate is $2,500 or more but less than $4,000, the Veterans Services Officer may recommend an apportionment from appropriated funds to the dependent parent or parents, predicated upon need, not to exceed the veteran's discontinued award, and authorize an award to the hospital from Personal Funds of Patients if available, otherwise, the hospital must look to the veteran's estate for payment. If the veteran's estate is less than $2,500, the Veterans Services Officer may recommend an apportionment to the dependent parents, predicated upon need, and an award of so much of the balance, if any, of the veteran's discontinued award as is necessary for the current care and maintenance of the veteran, to the hospital.

(c) *No dependents.* If the veteran is hospitalized by the United States or a political subdivision thereof other than a Veterans Administration institution and has no dependent parent, and the estate is less than $2,500, the Veterans Services Officer may recommend an award from appropriated funds, not to exceed the amount of the veteran's discontinued award, to the hospital for current care and maintenance. When the veteran's estate is $2,500 or more, no award from appropriated funds should be made but the Veterans Services Officer may authorize an award from Personal Funds of Patients if available; otherwise, the hospital must look to the veteran's estate for payment.

(d) *Hardship cases.* Veterans Services Officers are authorized, in exceptional cases, to deviate from the criteria stated to avoid hardship.

[40 FR 54249, Nov. 21, 1975]

§ 13.75 Beneficiaries in penal institutions.

(a) *All beneficiaries; 38 U.S.C. 505(a).* No Veterans Administration pension may be paid to or for any individual imprisoned in a penal institution as a result of conviction of a felony or misdemeanor for the period beginning 61 days after imprisonment and ending when imprisonment ends.

(b) *Incompetent veterans; 38 U.S.C. 3203 (b)(1).* In addition to paragraph (a) of this section as to payment in pension cases, the provisions of 38 U.S.C. 3203(b)(1) governing payment of compensation, pension or emergency officers' retirement pay to an incompetent veteran are applicable during his or her confinement in a penal institution whether awaiting trial, sentence or after conviction.

[36 FR 19024, Sept. 25, 1971, as amended at 40 FR 54249, Nov. 21, 1975]

§ 13.76 Appeals from Veterans Services Officer's determination under 38 U.S.C. 3203(b)(2).

(a) *Notification.* The Veterans Services Officer will be responsible for notification of action taken and the right to initiate an appeal by filing a Notice of Disagreement and of the time limits within which such notice may be filed (§ 19.109 of this chapter) when he or she determines that:

(1) The dependent is not in need.

(2) The needs of the dependent parent are to be met from the veteran's estate or from Personal Funds of Patients and no payments or partial payments will be made for the dependent parents' support from appropriated funds.

(3) No award from appropriated funds for care and maintenance for the veteran in a non-Veterans Administration hospital will be made, and that the veteran's estate will have to defray the cost.

(b) *Appeals.* Part 19 of this chapter will be followed in connection with appeals to the Board of Veterans Appeals from determinations of the Vet-

erans Services Officer. Appeals may be initiated by a dependent parent on questions of need and payments for his or her support from appropriated funds, and by a fiduciary for the disallowance of the use of appropriated funds for the veteran's institutional care and maintenance.

(c) *Statement of the case.* When a Notice of Disagreement is filed, the Veterans Services Officer will be responsible for furnishing the claimant and the claimant's representative with a Statement of the Case and such notification regarding the filing of an appeal as is provided for in §§ 19.114(b) and 19.115 of this chapter.

[40 FR 54249, Nov. 21, 1975]

§ 13.77 Administrative review of the Veterans Services Officer's determination made under 38 U.S.C. 3203(b)(2).

(a) *Veterans Services Officer (revisions).* (1) The Veterans Services Officer may revise any previous determination upon review of the evidence of record, provided a specific finding is made in writing that it was clearly and unmistakably erroneous.

(2) The Veterans Services Officer may revise a previous determination upon receipt of new evidence.

(b) *Chief Benefits Director.* Upon request for further review by the dependent parent, the Chief Benefits Director or designee will review and may revise the determination of the Veterans Services Officer as to the amount to be paid from Personal Funds of Patients for the support of the dependent parent, predicated upon need.

[40 FR 54249, Nov. 21, 1975]

§ 13.100 Supervision of fiduciaries.

(a) *Federal fiduciaries.* In Federal fiduciary cases, the Veterans Services Officer may, when he or she deems it necessary for the protection of the beneficiary's interests:

(1) Require an accounting, formal or informal, of Veterans Administration benefits paid.

(2) Terminate the appointment of a Federal fiduciary and appoint a successor Federal fiduciary.

(b) *Court-appointed fiduciaries.* In court-appointed fiduciary cases, the Veterans Services Officer will take such informal action as may be necessary to assure that the needs of the beneficiary are provided for and Veterans Administration benefits are prudently administered and adequately protected.

(c) *Unsatisfactory conditions.* In any case where a fiduciary fails to render a satisfactory account or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are illegal or inequitable or in excess of those allowed by law, or has failed to use Veterans Administration funds for the benefit of the beneficiary or the beneficiary's dependents, or has otherwise failed or neglected to properly execute the duties of his or her trust, and informal efforts by the Veterans Services Officer to correct the situation prove unsuccessful, the case will be referred to the District Counsel. In such cases the Veterans Services Officer may have all Veterans Administration benefits suspended.

(d) *Misappropriation, embezzlement or violation of Federal statutes.* When the evidence indicates a prima facie case of misappropriation, embezzlement or violation of the Federal statutes, the matter will be submitted to the District Counsel for review and, if appropriate, the District Counsel's referral to the U.S. Attorney.

[40 FR 54249, Nov. 21, 1975]

§ 13.101 Management and use of estates of minors.

Veterans Administration benefits payable in behalf of minors should be used for their benefit. Such funds should be expended only to the extent the person or persons responsible for their needs are unable to provide for them, except those derived from payments under 38 U.S.C. ch. 35.

[28 FR 10751, Oct. 5, 1963]

§ 13.102 Accountability of legal custodians.

(a) *Institutionalized veterans without wife, husband or child.* The legal custodian of Veterans Administration benefits of any incompetent veteran who has neither wife, husband nor child and who is being furnished hospital treatment, institutional or domi-

ciliary care by the United States or a political subdivision thereof, will account upon request to the Veterans Administration for funds received from the Veterans Administration for the beneficiary and will submit a statement of all other income received and the total assets from any source held for the beneficiary.

(b) *All other beneficiaries.* Compliance with the agreement as to benefit use and any authorized modifications due to changed need, proof of existence of funds surplus to immediate needs and proper investment thereof, if appropriate, will be established by personal contact.

[36 FR 19025, Sept. 25, 1971, as amended at 40 FR 54249, Nov. 21, 1975]

§ 13.103 Investments by legal custodians.

(a) *Type authorized.* Veterans Administration benefits paid a legal custodian in a beneficiary's behalf may be invested only in U.S. savings bonds, or in interest or dividend-paying accounts in State or federally insured institutions, whichever is to the beneficiary's advantage.

(b) *Savings bond registration.* When funds are invested in bonds, they will be registered in this form: (*Beneficiary's name*), (*Social security number*), under custodianship by designation of the Veterans Administration.

(c) *Savings account registration.* When funds are invested in interest or dividend-paying accounts in State or federally insured institutions, the account will be registered in this form: (*Beneficiary's name*), by (*Legal custodian's name*), legal custodian.

[40 FR 54249, Nov. 21, 1975]

§ 13.104 Accounts of court-appointed fiduciaries.

(a) *Requirement to account; notices of filings and hearings.* Accounts may be required from court-appointed fiduciaries as provided by State law, but in no event less frequently than once every 3 years. Arrangements will be made with the courts whereby notices of filing of all petitions, accounts, etc., and of hearings on same, relative to court-appointed fiduciary cases wherein the Veterans Administration is an interested party, will be sent to the Veterans Services Officer for review, distribution and such action as may be appropriate. Matters which require legal action will be referred to the District Counsel, and will include any matter in which the Veterans Administration has any objections to offer.

(b) *Fiduciary and beneficiary in jurisdiction other than a State of the United States.* Accounts will not be required, in the discretion of the Veterans Services Officer, in cases where the fiduciary and beneficiary permanently reside in a jurisdiction other than a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or the Republic of the Philippines, and the fiduciary appointment was made in said jurisdiction.

[40 FR 54250, Nov. 21, 1975]

§ 13.105 Surety bonds.

(a) *Federal fiduciaries.* (1) The Veterans Services Officer may require a legal custodian, custodian-in-fact or chief officer of a private institution recognized to administer Veterans Administration benefits on behalf of a beneficiary, to furnish a corporate surety bond in an amount determined to be sufficient to protect the interest of the beneficiary. Such bond shall run to the Administrator of Veterans Affairs for the use and benefit of the beneficiary.

(2) The Veterans Services Officer may require a legal custodian to furnish an agreement in lieu of a surety bond or additional surety bond when funds are deposited in an interest or dividend-paying account in a State or federally insured institution. The agreement will provide that the legal custodian and institution agree that all funds received from the Veterans Administration on behalf of the beneficiary, which have been or will be deposited by the legal custodian in the account, will be withdrawn only with the written consent of the Veterans Services Officer or designee.

(b) *Substitution of surety; claims against defunct companies.* If any surety company is placed in receivership or ceases to do business in the particular State, the Veterans Services Officer will take the necessary action

to have proper bonds substituted in Federal fiduciary cases and refer the matter to the District Counsel for such other action as may be appropriate.

[40 FR 54250, Nov. 21, 1975]

§ 13.106 Investments by court-appointed fiduciaries.

The Veterans Services Officer will review and to the extent possible determine the legality and prudence of investments involving Veterans Administration income or estate. It is Veterans Administration policy to invest income or estate derived from Veterans Administration benefits only in legal investments which have safety, assured income, stability of principal and ready convertibility for the requirements of the beneficiary and his or her dependents. When notice of a contemplated or actual illegal or imprudent investment comes to the attention of the Veterans Services Officer, he or she will take remedial action to protect the beneficiary's estate. Cases in which it becomes necessary to institute court action will be referred to the District Counsel.

[40 FR 54250, Nov. 21, 1975]

§ 13.107 Accounts of chief officers of public or private institutions.

(a) *Veterans Administration benefits.* The chief officer of an institution, other than a Federal institution, shall, when requested, render an account to the Veterans Administration for funds received from the Veterans Administration on account of an incompetent veteran.

(b) *All income and assets.* The chief officer of the aforementioned institutions shall, when requested, furnish a statement of all income received in behalf of a Veterans Administration beneficiary under legal disability and the total assets held for the beneficiary.

[36 FR 19025, Sept. 25, 1971]

§ 13.108 Estate $1,500; incompetent veteran, without wife, husband or child, is being furnished hospital treatment, institutional or domiciliary care by the United States or a political subdivision thereof.

(a) *Discontinuance of payments.* Where a veteran, rated incompetent by the Veterans Administration by reason of mental illness, without wife, husband or child as defined in 38 U.S.C. 101(4), is receiving hospital treatment, domiciliary or institutional care in a public institution other than a Veterans Administration institution or has a fiduciary and is receiving hospital treatment or domiciliary care in a Veterans Administration institution, and his or her estate equals or exceeds $1,500, the Veterans Services Officer shall immediately notify the Adjudication Division so that payments, other than insurance, may be discontinued. In those cases in which the payment has been discontinued, the Veterans Services Officer shall, when such estate has been reduced to $500, immediately notify the Adjudication Division of that fact.

(b) *Apportionment to dependent parent; care and maintenance award.* In any case in which a veteran, without wife, husband or child, is hospitalized by the United States or a political subdivision thereof and his or her award of compensation, pension or emergency officers' retirement pay has been discontinued because his or her estate equals or exceeds $1,500, an apportionment of the award otherwise payable may nevertheless be made to a dependent parent, if any, based upon actual need as determined by the Veterans Services Officer. So much of any monthly remainder of the discontinued payments as equals the amount charged to the veteran for his or her current care and maintenance in the institution in which treatment or care is furnished, but not more than the amount determined by the Veterans Services Officer to be the proper charge as fixed by statute or administrative regulation, may be paid to the institution. The Veterans Services Officer shall recommend to the Adjudication Division the amount of either award.

(c) *Death of veteran; Personal Funds of Patient.* In the event of the incompetent veteran's death in other than a Veterans Administration institution, the Veterans Services Officer should make certain that the provisions of the pertinent laws are applied as to the gratuitous benefits in Personal Funds of Patients.

[40 FR 54250, Nov. 21, 1975]

§ 13.109 Determination of value of estate; 38 U.S.C. 3203(b)(1).

Except as stated in paragraph (d) of this section, all funds, including accumulated social security and amounts on deposit in Funds Due Incompetent Beneficiaries and to the veteran's credit in Personal Funds of Patients at Veterans Administration regional offices, hospitals, State institutions, hospitals or institutions of any nature whatsoever, as well as other property, both personal and real (which is capable of being liquidated), and interest therein owned by the veteran, will be included in arriving at the value of the veteran's estate.

(a) The value of such property, including any interest therein, will be established at the estimated net price the veteran's equity in the property will bring at a forced sale after payment of all costs incident to liquidation.

(b) U.S. savings bonds, war bonds, adjusted service bonds, and other appreciation bonds, the current value, including accrued interest, will be used.

(c) Bonds and stocks, the current price listed on recognized stock exchange or by over-the-counter dealers will be the value to be used. In the absence of either, other reliable evidence of value may be used.

(d) The following will not be included as assets:

(1) Adjusted service certificate.

(2) Insurance policy having cash surrender or loan value.

(3) Dividend credits on National Service Life Insurance and United States Government Life Insurance policies.

(4) Personal property, such as furniture and household equipment, working tools, livestock and jewelry, which are included under State exemption statutes.

NOTE: Cash in the estate will be considered, notwithstanding it was derived from any of the above excluded items.

[40 FR 54250, Nov. 21, 1975]

§ 13.110 Escheat; post fund.

(a) *Escheat; 38 U.S.C. 3202(e).* Upon death of a beneficiary for whom payment of Veterans Administration benefits was made to a court-appointed fiduciary, legal custodian, custodian-in-fact, or by institutional award, the fiduciary (or the deceased beneficiary's personal representative) shall, upon request, account for and return to the Veterans Administration any remaining assets derived from Veterans Administration benefits which would under State law escheat to the State, less legal expenses of any administration necessary to determine that an escheat is in order.

(b) *General Post Fund; 38 U.S.C. 5220(a).* Upon the death of a veteran intestate while a member or patient in any facility while being furnished care or treatment therein by the Veterans Administration, who is not survived by a spouse, next of kin, or heirs entitled under the laws of the veteran's domicile, the veteran's fiduciary, if any, or the veteran's personal representative shall account for and turn over to the Veterans Administration all personal property, including money and chooses in action owned by the veteran at the time of his or her death. (See also § 14.514(c) of this chapter.)

(c) *Refusal of fiduciary or personal representative to cooperate.* If the fiduciary or personal representative, if any, refuses to voluntarily comply with the provisions of paragraph (a) or (b) of this section, the Veterans Services Officer will submit a complete report to the District Counsel.

[36 FR 19025, Sept. 25, 1971, as amended at 40 FR 54250, Nov. 21, 1975]

§ 13.111 Claims of creditors.

Under 38 U.S.C. 3101(a), payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt, either before or after receipt by the beneficiary, from the claims of creditors and State and local taxation. The fiduciary should invoke this defense where applicable.

If the fiduciary does not do so, the Veterans Services Officer should refer the matter to the District Counsel for appropriate action.

[40 FR 54251, Nov. 21, 1975]

§ 13.500 Apportionment for dependent parents and payment of maintenance charges under 38 U.S.C. 3203, as amended by Public Law 86-146.

(a) *Use of veteran's funds.* When payment has been discontinued under Public Law 86-146 because the estate of a hospitalized incompetent veteran having no wife or child equals or exceeds $1500, it is intended that the veteran's needs and those of his dependents be provided out of his funds whether in the possession of his guardian, in Personal Funds of Patients or elsewhere to the extent practicable.

(b) *Delegation of authority.* Chief Attorneys are delegated authority to authorize release of funds from Personal Funds of Patients for the needs of veterans and their dependents including amounts fixed by statute or valid administrative regulations as the cost of current maintenance of veterans in public institutions other than Veterans Administration institutions.

(c) *Use of personal funds of patients.* When the amount of benefits otherwise payable is inadequate for the needs of a dependent parent or parents, the Chief Attorney may recommend the release from Personal Funds of Patients of any sums required to supplement the apportionment. (Instruction 2, title 38 U.S.C. chapter 55, Public Law 86-146)

[25 FR 2163, Mar. 16, 1960]

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AUTHORITY: 72 Stat. 1114, 1238; 38 U.S.C. 210, 3401-3405.

SOURCE: 19 FR 5552, Aug. 31, 1954, unless otherwise noted.

§ 14.500 Functions and responsibilities of General Counsel.

The General Counsel is responsible to the Administrator for the following:

(a) All litigation arising in, or out of, the activities of the Veterans Administration or involving any employee thereof in his or her official capacity.

(b) All interpretative legal advice involving construction or application of laws, including statutes, regulations, and decisional as well as common law.

(c) All legal services, advice and assistance required to implement any law administered by the Veterans Administration.

(d) All delegations of authority and professional guidance required to meet these responsibilities.

(e) Maintenance of a system of field offices capable of providing legal advice and assistance to all Veterans Administration field installations and acting for the General Counsel as provided by Veterans Administration Regulations and instructions, or as directed by the General Counsel in special cases. This includes cooperation with U.S. Attorneys in all civil and criminal cases pertaining to the Veterans Administration and reporting to the U.S. Attorneys, as authorized, or to the General Counsel, or both, criminal matters coming to the attention of the District Counsel.

(f) Other matters assigned.

[42 FR 41410, Aug. 17, 1977]

§ 14.501 Functions and responsibilities of District Counsels.

(a) Functions and responsibilities of the District Counsels are those set forth in this part and all other matters assigned by the General Counsel.

(b) In any matter within the jurisdiction of the General Counsel, delegated or otherwise assigned, the District Counsel and designated staff attorneys are authorized to conduct investigations, examine witnesses, take

affadavits, administer oaths and affirmations and certify copies of public or private documents.

(c) The District Counsel is authorized to, and shall, under the guidance of the General Counsel, provide legal services, advice and assistance to Veterans Administration installations within the district assigned. In any area of regulatory, assigned or delegated responsibility, the District Counsel may delegate to staff members or other Veterans Administration attorneys authority to perform, to the extent specified, any legal function under the professional direction of the District Counsel. Conversely, the District Counsel may modify, suspend, or rescind any authority delegated hereunder.

(d) The District Counsel is authorized to cooperate with affiliated organizations, legislative committees, and with local and State bar associations to the end that any State law deficiencies relating to Veterans Administration operations may be removed. No commitment as to proposed legislation will be made without the approval of the General Counsel.

(e) In any case wherein the District Counsel is authorized to take legal action and payment of costs and necessary expenses incident thereto are involved, the department requesting such action will pay such cost and expenses. Where it is impractical for the District Counsel to perform the legal service because of cost, distance, etc., the customary fee for the service rendered by a local attorney employed by the District Counsel will be borne by the department requesting such action.

[42 FR 41411, Aug. 17, 1977]

§ 14.502 Requests for legal opinions from Central Office.

Requests for formal legal advice, including interpretation of law or regulations, shall be made only by the Administrator, the Deputy Administrator, Associate Deputy Administrator, Assistant Deputy Administrator, and the department head or top staff official having jurisdiction over the particular subject matter, or by a subordinate acting for any such official.

[42 FR 41411, Aug. 17, 1977]

§ 14.503 Requests for legal advice and assistance in other than domestic relations matters.

(a) Requests from administrative officials in the field for legal advice or assistance will be addressed to the appropriate District Counsel and will be in writing if requested by the District Counsel. Questions regarding insurance activities at St. Paul and Philadelphia should be referred to the District Counsel at the respective station. Except as to matters referred to in § 14.504(b), the District Counsel's authority to render legal advice and assistance shall extend to the release (unless otherwise instructed by the General Counsel), without prior approval of the General Counsel, of opinions on all legal questions which are either:

(1) Wholly controlled by the interpretation or application of the laws of the State or States in the district office area, or

(2) Covered by Veterans Administration precedents and opinions of the General Counsel which the District Counsel knows to be currently authoritative on the issues involved.

In cases covered by § 14.504(b) and all others not included in paragraph (a)(1) or (2) or paragraph (b) of this section, the District Counsel will prepare a tentative opinion (including identification of the benefit sought) and forward it to the General Counsel for review. When it is returned, the District Counsel will conform the opinion (if necessary) to the views of the General Counsel, and release it to the requesting official. The District Counsel may release any modified opinion as the opinion of the General Counsel.

(b) The District Counsel may submit to the General Counsel any legal question, opinion, or question pertinent to legal functions, upon which the views or advice of the General Counsel are desired. This request should set forth the special circumstances, contain a statement of the legal implications involved (including any Veterans Administration benfefits claimed), set forth the facts out of which they arise, and

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cite any statutes or court decisions readily available, regulations, related opinions of the General Counsel and other matters deemed pertinent, with appropriate discussion. If any department will be affected, a copy of the reply will be forwarded to that department head.

[42 FR 41411, Aug. 17, 1977]

§ 14.504 Domestic relations questions, authority and exceptions.

(a) District Counsels have the same authority with respect to domestic relations questions as they do with respect to matters covered by § 14.503 except as specifically excluded by the provisions of paragraph (a) of that section.

(b) In the following instances the District Counsel, regardless of whether State law is wholly controlling or a Veterans Administration precedent is available, will prepare a tentative opinion, researched as completely as possible with reasonably available facilities, and forward two copies thereof directly to the General Counsel for review and disposition (as provided in § 14.503 respecting other than domestic relations matters):

(1) Where it is not clear under applicable State law: (i) Whether the marriage of a veteran's child or the remarriage of a veteran's widow was void without decree of annulment, or (ii) whether an annulment decree was rendered by a court with basic authority to render annulment decrees;

(2) When fraud or collusion by either party appears to have influenced the granting of an annulment decree;

(3) Cases in which there are contesting claims;

(4) Unusual situations, such as those involving proxy marriages, the law of two or more jurisdictions or of a foreign country;

(5) Cases involving difference of opinion between District Counsels or between a District Counsel and the official who submitted the question involved.

[42 FR 41411, Aug. 17, 1977]

§ 14.505 Submissions.

All submissions will set forth the question of law on which the opinion is desired, together with a complete and accurate summary of relevant facts. Files, correspondence, and other original papers will not be submitted unless pertinent portions thereof cannot practicably be summarized or copies made and attached as exhibits.

[42 FR 41411, Aug. 17, 1977]

§ 14.507 Opinions.

Formal opinions of the General Counsel in individual claims (compensation, pension, insurance, loans, vocational rehabilitation, readjustment allowance, indemnity, etc.) are filed in the individual claims or insurance folder. (See § 1.525 of this chapter.)

Printed opinions of the General Counsel of a general nature (administration, claims, fiscal, personnel, contract, loan guaranty, or insurance, etc.) will be digested and indexed. Copies will be filed in the Office of the General Counsel and in District Counsels' offices. Such opinions are not available for general distribution outside the Veterans Administration, but copies of printed opinions on subjects of general interest (as, for example, loan guaranty, vocational rehabilitation and education, etc.) may be supplied persons, organizations or agencies interested in the subject covered by the opinion, or affected by it, when, in the opinion of the General Counsel or of the service concerned, the public interest justifies or requires such action.

[42 FR 41411, Aug. 17, 1977]

Litigation (Other Than Under the Federal Tort Claims Act)

Source: Sections 14.514 to 14.518 appear at 42 FR 41411, Aug. 17, 1977, unless otherwise noted.

§ 14.514 Suits by or against United States or Veterans Administration officials.

(a) *Suits against United States or Veterans Administration officials.* When a suit involving any activities of the Veterans Administration is filed against the United States or the Administrator or a suit is filed against any employee of the Veterans Admin-

istration in which is involved any official action of the employee, not covered by the provisions of §§ 14.600 through 14.617, a copy of the petition will be forwarded to the General Counsel who will take necessary action to obtain the pertinent facts, cooperate with or recieve the cooperation of the Department of Justice and, where indicated, advise the District Counsel of any further action required.

(b) *Counsel and representation of employees.* The Department of Justice may afford counsel and representation to Government employees who are sued individually as a result of the performance of their official duties. A civil action commenced in a State court against an employee, as the result of an action under color of his or her office, may be removed to the applicable Federal District Court. If a suit is filed against an employee as the result of the performance of his or her official duties, where the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 4116 are not applicable (see § 14.610), and the employee desires to be represented by the U.S. Attorney, the District Counsel will obtain a written request to this effect from the employee and will also obtain an affidavit of the station Director describing the incident in sufficient detail to enable a determination to be made as to whether the employee was in the scope of his or her employment at the time. These statements, together with a copy of the petition and two copies of a summary of pertinent facts, will be sent to the General Counsel, who will transmit copies thereof to the Department of Justice for appropriate action.

(c) *Suits by the United States.* In any instance wherein direct submission to a U.S. Attorney for institution of civil action has been authorized by the Department of Justice, the District Counsel will furnish the U.S. Attorney a complete report of the facts and applicable law, documentary evidence, names and addresses of witnesses and, in cases wherein Veterans Administration action has been taken, a copy of any pertinent decision rendered. The District Counsel will forward two copies of such report and of any proposed pleading to the General Counsel, and will render any practicable assistance requested by the U.S. Attorney.

§ 14.515 Suits involving loan guaranty matters.

(a) In actions for debt, possession or actions similar in substance (including title actions) in which § 36.4282 or § 36.4319 of this chapter has been complied with, the District Counsel is authorized to enter the appearance of and represent the Administrator of Veterans Affairs as the attorney of record and to file claims for debt in probate proceedings without prior reference to the General Counsel. Any such action will normally be taken within the time prescribed by law as though there had been valid service of process. In all other types of cases, the District Counsel will not enter an appearance or file any pleading on behalf of the Administrator except in imperative emergency until authorization is received from the General Counsel after submission of all relevant facts. In doubtful cases, the District Counsel will request instructions from the General Counsel, submitting copy of so much of the pleadings or other papers, together with a sufficient recital of the facts as will make clear the background, the issues, and the relief sought. The submission also will include names and addresses of adverse parties and attorneys so that immediate action may be taken if injunctive relief seems proper. Where necessary in any case to preserve rights which might be lost by default if there had been proper service of process, appropriate action will be taken by a special appearance, or, in jurisdictions where a special appearance does not serve the purpose or under State statute or decisions will constitute a general appearance for a later date, by an appearance through amieus curiae, to obtain an extension of time, preferably 30 days or more, in which to appear and plead without prejudice. If not feasible to obtain an extension, the District Counsel will explain to adverse counsel by letter, and personally, if desirable, the necessity of deferring all action and will see that the proper judge receives a signed copy of the letter before default day.

The letter will point out that there is no valid service of process on the Administrator of Veterans Affairs but will not base the delay on that alone.

(b) The General Counsel or each District Counsel representing the General Counsel is the attorney of the Administrator of Veterans Affairs for all purposes of 38 U.S.C. 1820 and, as such, is authorized to represent the Administrator in any court action or other legal matter arising under said statutory provisions. Said authorization is subject to any applicable statutes and Executive orders concerning claims of the United States. A District Counsel may enter appearance in such cases, subject to the provisions of §§ 36.4282 and 36.4319 of this chapter and paragraph (a) of this section. Each District Counsel is authorized to contract for the employment of attorneys on a fee basis for conducting any action arising under guaranty or insurance of loans or direct loans by the Veterans Administration; or for examination and other proper services with respect to title to and liens on real and personal property, material incident to such activities of the Veterans Administration, when, such employment is deemed by the District Counsel to be appropriate. the authority delegated to the District Counsel may be redelegated with the approval of the General Counsel.

(c) The General Counsel and each District Counsel, in carrying out their duties as authorized in paragraph (a) or (b) of this section, are authorized: (1) To contract for and execute, for and on behalf of the administrator, any bond (and appropriate contract or application therefor) which is required in or preliminary to or in connection with any judicial proceeding in which the District Counsel is attorney for the Administrator, and to incur obligations for premiums for such bonds and (2) to do all other acts and incur all costs and expenses which are necessary or appropriate to further or protect the interests of the Administrtor in or in connection with prosecuting or defending any cause in any court or tribunal within the United States, which cause arises out of or incident to the guaranty or insurance of loans, or the making or direct loans by the Veterans Administration, pursuant to 38 U.S.C. ch. 37.

(d) Except in an emergency, no District Counsel will initiate action for appellate review without prior approval by the General Counsel. These limitations do not preclude the filing of a motion for a new trial, appeal to intermediate court with hearing do novo, the giving of notice of appeal, reserving of bills of exception, or any other preliminary action in the trial court which may be necessary or appropriate to protect or facilitate, the exercise of the right of appellate review, nor do they preclude the taking of appropriate steps on behalf of the Administrator as appellee (respondent) without prior reference to the General Counsel. Upon the conclusion of the trial of a case, the District Counsel will report the result thereof to the General Counsel with recommendation as to seeking appellate review if the result reported is adverse to the position of the Veterans Administration in the litigation. The reporting District Counsel who recommends appellate review will include as a part of the communication, or in exhibits attached: (1) A summary of the evidence; (2) a summary of the law points to be reviewed; (3) citations of statutes and cases; (4) statements of special reasons for recommending appellate review; (5) time limitations for the action recommended; (6) requirements, if any, respecting printing of the record and briefs; (7) the estimated total expenses to be incurred by reason of the appeal, reporting separately the estimated costs for printing the brief and record so that authority for printing may be granted in accordance with the prescribed procedure, MP-1, part II, chapter 9;[1] and (8) the recommendation or a statement as to nonrecommendation by the Loan Guaranty Officer.

§ 14.516 Escheat and post fund cases.

In any case in which the Veterans Administration is entitled to possession of assets or property under the escheat provisions of 38 U.S.C. 3202(e),

[1] Available in any Veterans Administration station.

the gifts provisions of 38 U.S.C. ch. 83 or the General Post Fund provisions of 38 U.S.C. ch. 85, the District Counsel will endeavor to obtain possession of such assets or property in any manner appropriate under local procedure and practice, other than litigation. This procedure would include exploratory inquiry of the person having custody or possession of the assets or property for the purpose of determining whether the person would be willing to turn over the property to the Veterans Administration without litigation. If unsuccessful in this effort, a complete report will be submitted by the District Counsel to the General Counsel so that appropriate action may be taken to obtain the assistance of the Department of Justice in the matter.

§ 14.517 Cases affecting the Veterans Administration generally.

District Counsels will establish and maintain such close liaison with the State and Federal courts as to insure that notice will be afforded the Veterans Administration on all cases affecting the Veterans Administration. Such information will be forwarded to the General Counsel promptly in every case.

§ 14.518 Litigation involving beneficiaries in custody of Veterans Administration employees acting in official capacity.

(a) *Service of process generally.* An employee, at a field station, served with a writ of habeas corpus involving a beneficiary of the Veterans Administration in the employee's custody will immediately notify the District Counsel of the district in addition to taking such steps as in his or her judgment are necessary for self protection.

(b) *Habeas corpus writs.* (1) If a Director of a Veterans Administration hospital concerned advises that, according, to current medical opinion, hospitalization is necessary for the veteran's safety or the safety of others, the District Counsel will vigorously oppose the writ at the trial court level. If the writ is granted, no further action will be taken unless so instructed by the General Counsel.

(2) If the medical opinion is that hospitalization is not required for the veteran's safety or the safety of others but continued treatment is clearly indicated in the veteran's interest, the District Counsel will assure that the court issuing the writ is so informed and will abide by the court's decision.

(3) If the medical opinion is that there is no danger of self injury to the veteran or others and the need for continued treatment is not clearly demonstrated, the District Counsel will advise the Director of the hospital concerned that the veteran should be released and will notify the veteran's attorney of the planned discharge. These cases will be handled informally to the extent practicable.

(4) Involuntary confinement of mentally ill patients in Veterans Administration installations is predicated upon the law of the State in which the installation is located. In the event the writ is filed in Federal Court, the District Counsel will cooperate with the U.S. Attorney to the end that the case is removed to the appropriate State court.

Prosecution

Source: Sections 14.560 to 14.563 appear at 42 FR 41413, Aug. 17, 1977, unless otherwise noted.

§ 14.560 Procedure where violation of penal statutes is involved.

(a) The submission to the appropriate U.S. Attorney or FBI, according to local practice, of a violation or suspected violation of the penal provisions of the statutes of the United States, including those offenses coming within the purview of the Assimilative Crimes Act (18 U.S.C. 13), will be made by the District Counsel within whose jurisdiction the alleged offense appears to have been committed. Where the file or record which contains evidence of a penal offense is maintained in a different field station, it will be referred to the appropriate District Counsel in whose area the offense was committed, for referral. Where the file or record is located in or has been forwarded to Central Office, the matter will be referred to the General Counsel for development and transmittal to the appropriate District Counsel or

direct to the Department of Justice. (38 U.S.C. 210(c)(1))

(b) In the Central Office, reports of the Office of Inspector General evidencing any criminal acts will be transmitted by the General Counsel to the appropriate District Counsel for referral or, in the discretion of the General Counsel, the matter may be referred directly to the Department of Justice. Investigations conducted by the Office of Inspector General are administrative in nature and development of criminal aspects of a case should only be incidental to the investigation of administrative irregularities. If evidence of administrative irregularities, as set forth in § 1.452 of this chapter, is brought to the attention of a District Counsel, he or she will recommend referral to the Office of Inspector General, VA central Office through appropriate office and department heads. If there is evidence of violation of the law, as well as administrative irregularities, referrals may be made simultaneously to law enforcement authorities and administrative personnel. When evidence of a violation of penal statutes is uncovered during the course of an administrative investigation by the Office of Inspector General, the investigator will notify the appropriate District Counsel of any referral tc the U.S. Attorney or FBI, and, in addition, furnish him or her a copy of any written submission. (38 U.S.C. 210(c)(1))

(c)) The Department of Justice, or the U.S. Attorneys, are charged with the duty and responsibility of interpreting and enforcing criminal statutes, and the final determination as to whether the evidence in any case is sufficient to warrant prosecution is a matter solely for their determination. No judgments will be made, either at the General Counsel level, or at the District Counsel level, as to whether or not a case should be referred, based on the strength or value of the evidence or nature of the violation alleged. If the Department of Justice or U.S. Attorney decides to prosecute, the District Counsel will cooperate as may be requested. The District Counsel will bring to the attention of the General Counsel any case wherein he or she is of the opinion that criminal or civil action should be initiated, notwithstanding a decision by the U.S. Attorney not to bring such action. Cases deemed essential to protect the interest of the Veterans Administration or which could cause undue publicity, or notoriety will be reported promptly to the General Counsel. Likewise, the District Counsel will report such cases in which, in his or her opinion, prosecution has been delayed for an inordinate amount of time. (38 U.S.C. 210(c)(1))

[43 FR 39365, Sept. 5, 1978]

§ 14.561 Administrative action prior to submission.

Before a submission is made to the U.S. Attorney in cases involving personnel or claims, the General Counsel, if the file is in Central Office, or the District Counsel at the regional office, hospital or center, if the file is in the regional office or other field station, will first ascertain that necessary administrative or adjudicatory (forfeiture (see Pub. L. 86-222; 73 Stat. 452), etc.), action has been taken; except that in urgent cases such as breaches of the peace, disorderly conduct, trespass, robbery, or where the evidence may be lost by delay, or prosecution barred by the statute of limitations, submission to the U.S. Attorney will be made immediately.

§ 14.562 Collections or adjustments.

When it is determined that a submission is to be made to the U.S. Attorney, no demand for payment or adjustment will be made without the advice of the U.S. Attorney. However, if, before or after submission, the potential defendant or other person tenders payment of the liability to the United States, payment will be accepted if the U.S. Attorney has no objection. If the U.S. Attorney determines that prosecution is not indicated, or when prosecution has ended, the file will be returned to the appropriate office with a report as to the action taken.

§ 14.563 Crimes or offenses on Veterans Administration property.

Upon receipt by the District Counsel of a report from the Director of any

Veterans Administration facility located in the district regional office area, other than the District of Columbia, indicating a violation of any penal statutes occurring on such Veterans Administration property, the District Counsel will extend full cooperation and advice to the Director. In so doing, the District Counsel will be guided by the provisions of 18 U.S.C. 13 and 3041, and 38 U.S.C. 218. Serious crimes (felonies or misdemeanors) committed on a hospital or domiciliary reservation will be reported directly to the U.S. Attorney or local agent of the Federal Bureau of Investigation by the Director of the facility. The District Counsel will give every assistance to the Director in such cases.

Federal Tort Claims

§ 14.600 Federal Tort Claims Act.

(a) The Federal Tort Claims Act (28 U.S.C. 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, and 2671 through 2680) prescribes a uniform procedure for handling of claims against the United States, for money only, on account of damage to or loss of property, or on account of personal injury or death, caused by the negligent or wrongful act or omission of a Government employee while acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred.

(b) The act provides that: (1) No court action (except those involving a third party complaint, cross-claim, or counterclaim) shall be instituted unless the claimant shall have first presented his or her claim to, and it has been finally denied by, the appropriate Federal agency. The failure, however, of the agency to make final disposition of the claim within 6 months after it is filed may, at the option of the claimant, be deemed a final denial of the claim (28 U.S.C. 2675(a));

(2) Where a suit is filed after the denial of the administrative claim, the amount sought is limited to the amount of the claim presented to the Federal agency, except on proof of newly discovered evidence or intervening facts relating ot the amount of the claim (28 U.S.C. 2675(b));

(3) Suits are tried withoiut a jury, and a district court judgment may be appealed to the appropriate U.S. Circuit Court of Appeals, or upon consent, to the Court of Claims of the United States;

(4) Administrative claims must be filed in writing with the appropriate Federal agency within 2 years from the date the claim accrues, and a suit must be filed within 6 months from the date of mailing of the final denial by the agency of the administrative claim (28 U.S.C. 2401(b));

(5) Section 2680 of title 28, United States Code, enumerates certain types of claims for which the United States is not liable under the Federal Tort Claims Act.

[38 FR 5470, Mar. 1, 1973, as amended at 42 FR 41414, Aug. 17, 1977]

Premature Suits

Source: Sections 14.601 to 14.608 appear at 42 FR 41414, Aug. 17, 1977, unless otherwise noted.

§ 14.601 Dismissal action.

Where a tort suit against the United States (other than by third party complaint, cross-claim, or counterclaim) is filed without being preceded by an administrative claim (see § 14.600(b)(1)), the District Counsel shall promptly, upon receipt of notice of the action thereon, notify the U.S. Attorney and the General Counsel, who will, in turn, notify the Department of Justice, that the provisions of 28 U.S.C. 2675(a) have not been complied with, and that the suit appears to be subject to a motion to dismiss for lack of jurisdiction. The General Counsel should be kept advised as to subsequent developments, and should be furnished a copy of any order of dismissal which may be entered by the court.

Administrative Claims

§14.602 Scope and authority to consider claims.

(a) The Administrator and those delegated such authority in § 2.6 (e) of this chapter are authorized to consid-

er, ascertain, adjust, determine, compromise and settle claims for money damages against the United States in accordance with regulations prescribed by the Attorney General (28 CFR 14.1 et seq.). Any award, compromise, or settlement exceeding $25,000 shall be effected only with the prior written approval of the Attorney General or designee. In addition, a claim may be compromised or settled only after consultation with the Department of Justice when:

(1) A new precedent or point of law is involved;

(2) A question of policy is or may be involved;

(3) The United States is or may be entitled to indemnity or contribution from a third party and the Veterans Administration is unable to adjust the third party claim;

(4) For any reason, the compromise of a particular claim, as a practical matter, will, or may, control the disposition of a related claim in which the amount to be paid may exceed $25,000; or

(5) The United States, an employee, agent, or cost-plus contractor, is involved in litigation based on a claim arising out of the same incident or transaction.

(b)(1) All claims coming within paragraph (a) of this section will be referred to the General Counsel for disposition.

(2) Where full development of a claim indicates that liability exists and the potential settlement value exceeds $25,000, the District Counsel who received the claim will submit the case to the General Counsel for consideration.

(3) Where multiple claims (including claims for a subrogor and a subrogee) arise from the same incident, and the total of such claims exceeds the settlement amount delegated to the District Counsel, all such claims will be forwarded to the General Counsel for consideration.

(c) Pursuant to the authority delegated to General Counsel by § 2.6(e) of this chapter to redelegate his authority to act on claims filed under the Federal Tort Claims Act, as amended all District Counsels are authorized to settle such tort claims in an amount not to exceed $25,000, where in the view of the respective District Counsels, liability exists.

(d) Where it is determined that liability on the part of the Government does not exist, the District Counsel who initially received the claim will deny liability regardless of the amount claimed or the potential value if liability existed. If liability is questionable, the District Counsel will refer the claim for final determination to the General Counsel.

(e) For the purpose of these tort claim regulations (§§ 14.617), any reference to the District Counsel includes all other personnel in the District Counsel's office to whom authority to handle Federal tort claims has beeen delegated by § 2.6(e)(1) and (2) of this chapter.

[42 FR 41414, Aug. 17, 1977, as amended at 43 FR 2722, Jan. 19, 1978]

§ 14.603 Proper claimants.

(a)(1) A claim for damage to or loss of property may be presented by the owner of the property, his or her duly authorized agent or legal representative.

(2) A claim for personal injury may be presented by the injured person, his or her duly authorized agent, or legal representative.

(3) A claim based on death may be presented by the executor/executrix or administrator/administratrix of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(4) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insuree with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly. However when an insurer presents a claim asserting the rights of a subrogee, he or she shall also present appropriate evidence to support his or her right.

(5) A claim presented by an agent or legal representative shall be presentd in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the

person signing, and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, executor/executrix, administrator/administratrix, parent, guardian, or other representative.

(b) State court procedures relating to the presentation of claims on behalf of mentally incompetent claimants will be complied with. Applicable statutes of limitation are not, however, tolled by the claimant's incompetency.

(c) State court procedures, other than statutes of limitation, relating to the presentation of claims on behalf of minors will be complied with where:

(1) The claimant is represented by an attorney who, at minimal expense and inconvenience, can easily obtain State court approval;

(2) The claimant is not a parent or is otherwise unrelated to the infant;

(3) The minor will reach majority before the expiration of the 2-year period of limitation prescribed by 28 U.S.C. 2401(b); or

(4) The amount involved or the permanence and seriousness of personal injuries are of such magnitude as to warrant judicial approval in order to assure that the interests of the minor are fully protected.

[38 FR 5470, Mar. 1, 1973, as amended at 42 FR 41414, Aug. 17, 1977]

§ 14.604 Filing a claim.

(a) Each person who inquires as to the procedure for filing a claim against the United States, predicated on a negligent or wrongful act or omission of an employee of the Veterans Administration acting within the scope of his or her employment, will be furnished a copy of SF 95, Claim for Damage, Injury, or Death. The claimant will be advised to submit the executed claim directly to the District Counsel having jurisdiction of the area wherein the occurrence complained of took place. He or she will also be advised to submit the information prescribed by § 14.607 to the extent applicable. If a claim is presented to the Veterans Administration which involves the actions of employees or officers of other agencies, it will be forwarded to the Veterans Administration General Counsel, who will transmit forthwith to the appropriate agency.

(b) A claim shall be deemed to have been presented when the Veterans Administration receives from a claimant, his or her duly authorized agent or legal representative, an executed SF 95, or other written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death: *Provided, however,* That before compromising or settling any claim, an executed SF 95 shall be obtained from the claimant.

(c) A claim presented in compliance with paragraphs (a) and (b) of this section may be amended by the claimant at any time prior to final Veterans Administration action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Veterans Administration shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the amendment (see § 14.600(b)(1)).

§ 14.605 Investigation and development.

(a) *Development of untoward incidents prior to receipt of a claim.* (1) A report of any collision involving a Government-owned vehicle which results in property damage or personal injury or death will be made by the operator of the Government vehicle immediately following the accident, on SF 91, Operator's Report of Motor Vehicle Accident, and shall be submitted to the Director of the station involved. A copy of said report, accompanied by an executed copy of VA Form 2162, Report of Accident, Injury, Occupational Illness, or Fire, and of VA Form 2162b, Report of Accident, Injury, Occupational Illness, or Fire (Continued), will be promptly submitted by the Director to the appropriate District Counsel, who will authorize such additional investigation as the circumstances of the case may warrant.

Forms required by other agencies will continue to be used in addition to VA Form 2162.

(2) (i) Any incident resulting in damage to, or loss of, property, other than personal effects of a patient in a Veterans Administration facility, or in personal injury or death, due apparently or allegedly to the negligent or wrongful act or omission of an employee of the Veterans Administration acting within the scope of his or her office or employment, or damage to or loss of Government-owned property caused by other than a Veterans Administration employee acting within the scope of his or her office or employment, will be immediately reported on SF 92-A, Report of Accident Other Than Motor Vehicle. The Director of the station where such occurrence took place will promptly transmit a copy of the report to the appropriate District Counsel who will authorize such additional investigation as the circumstances of the case may warrant.

(ii) Where the incident involves the loss of personal effects of a patient in a Veterans Administration facility, the Director will assist the patient in completing an SF 95, Claim for Damage, Injury, or Death, and will advise the patient that it will be forwarded immediately to the appropriate District Counsel for consideration. The Director will forward along with the claim a brief summary of the facts, as well as his or her recommendation, to the District Counsel. The District Counsel will expedite the processing of claims of this nature.

(3) An employee will be designated at each station to investigate motor vehicle collisions and other incidents involving damage to, or loss of privately owned property or personal injury or death, apparently or allegedly resulting from the negligent or wrongful act or omission of an employee of the Veterans Administration acting within the scope of his or her employment, other than investigation of alleged malpractice, or damage to or loss of Government-owned property caused by other than Veterans Administration employees. In Central Office, the designation will be made by the Manager, Administrative Services, and at all other stations, by the Director.

(4) The District Counsel for the area in which a field station is located will be responsible for processing claims involving motor vehicle collisions and other occurrences resulting in property damage, personal injury, or death, within such area. The District Counsel, Veterans Administration Regional Office, Washington, D.C. will also have jurisdiction, except as otherwise provided in paragraph (a)(3) of this section over incidents occurring in Veterans Administration Central Office.

(b) *Postclaim requirements.* (1) Where a claim is presented, the District Counsel will immediately acknowledge receipt of the claim and commence an investigation. In the course of the investigation, statements will be obtained from the personnel involved as well as from others who have personal knowledge covering the relevant facts. Copies of all pertinent Veterans Administration medical and other records will be obtained and the copies will be assembled so that they are identical in arrangement to the originals. Pertinent medical, employment, and other records maintained by private hospitals, private industry, and other places will likewise be obtained as well as photographs or other graphic materials.

(2) After completing the investigation of a claim, the District Counsel having jurisdiction of the case will review all the evidence available and prepare a concise, complete report, including a summary of the evidence, findings of essential facts, citations of applicable local law, regulations and decisions, and a conclusion as to the liability of the United States. If liability is indicated, this report will also include a determination as to the amount of the reasonable compromise or settlement range of the case. Sufficient copies of the report and supporting material will be prepared to enable the District Counsel to submit two copies to the office authorized to dispose of the claim if it is beyond the investigating office's jurisdiction, and two copies to the General Counsel if the claim subsequently reaches the litigation stage. An extra complete

copy of the report and supportive material will be retained by the District Counsel and will be forwarded to the U.S. Attorney, together with the original report of investigation, if litigation is initiated. The report itself, and the supporting materials, will be indexed, tabbed and securely fastened so that it is one unit, if feasible.

(3) In medical malpractice cases, the District Counsel may refer the medical records and statements to the District Medical Director for review and for professional opinion or guidance. In the consideration of claims involving a medical question, the responsible District Counsel involved will be guided by the views of the District Medical Director and the General Counsel will be guided by the views of the Chief Medical Director as to the standard of medical care and treatment, the nature and extent of the injuries, the degree of temporary or permanent disability, the prognosis, the necessity for future treatment or physical rehabilitation, and any other pertinent medical aspects of a claim.

§ 14.606 Requests for medical information.

(a) Where there is indication that a tort claim will be filed, medical records or other information shall be not be released without approval of the District Counsel.

(b) Request for medical records, documents, reports, or other information shall be handled in accordance with the provisions of § 1.511(a)(2) of this chapter.

[38 FR 5470, Mar. 1, 1973, as amended 42 FR 41415, Aug. 17, 1977]

§ 14.607 Evidence to be submitted.

In conducting the investigation into the facts and circumstances giving rise to the claim, the District Counsel will consider the following guidelines to the extent applicable:

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his or her death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him or her for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Claimant may be requested to furnish a copy of a medical opinion supporting his or her contention of malpractice.

(9) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by the attending physician or dentist setting forth the nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the agency or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that he or she furnished the report referred to in the

first sentence of this subparagraph and has made or agrees to make available to the agency any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of the claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his or her employer showing actual time lost from employment, whether he or she is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Claimant may be requested to furnish a copy of a medical opinion supporting his or her contention of malpractice.

(7) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the damage to or loss of property or the damages claimed.

[38 FR 5470, Mar. 1, 1973, as amended at 42 FR 41415, Aug. 17, 1977]

§ 14.608 Disposition of claims.

(a) *Disallowance and appeal.* Where a determination is made that there is no liability on the part of the United States, the District Counsel or the General Counsel, as appropriate, will notify the claimant (or claimant's attorney or legal representative) by certified or registered mail. Notification of final denial may include a statement of reasons for the denial. Denial of a tort claim by any District Counsel will include appropriate notice of the appellate rights of the claimant. The claimant shall be advised in the denial letter that he or she may appeal the denial within the Veterans Administration, and that such appeal, if made, should be addressed to and received by the General Counsel within 6 months of the mailing date of the denial letter. The denial letter shall also include a statement that, if the claimant is dissatisfied with the agency action, and/or does not wish to exercise the right to appeal the denial to the General Counsel, suit in an appropriate United States District Court may be instituted not later than 6 months after the date of mailing of the notice of final denial.

(b) *Statute of limitations.* Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b), a claimant, or claimant's duly authorized agent, or legal representative, may file a written request with the agency for an appeal from denial of a claim issued under paragraph (a) of this section. Upon the timely filing of an appeal, the agency shall have 6 months from the date of filing in which to make a final disposition of the claim, and the claimant's option under 28 U.S.C. 2675(a), shall not accrue until 6 months after the filing of an appeal. Final agency action on an appeal shall be effected by the General Counsel. If the previous denial decision is upheld, the notice shall be by certified mail and will include advice as to the right to bring suit within 6 months.

(c) *Allowance or compromise.* (1) In the case of a claim where a determination is made by the District Counsel (if the claim is one for which authority

has been delegated under § 2.6(e) of this chapter and § 14.602(c), or by the General Counsel, that there is or could be liability on the part of the Government, an attempt will be made to obtain an agreement with the claimant, or claimant's attorney, as to a fair and reasonable settlement or compromise.

(2) If the claim is one being handled by the District Counsel and a settlement agreement is reached in a sum of $2,500 or less, the District Counsel will approve the voucher (SF 1145, Voucher for Payment under Federal Tort Claims Act) and send the signed original and three yellow copies to the General Counsel for processing. If the settlement agreement is above $2,500 but within the delegated authority of the District Counsel, the District Counsel will approve the voucher (SF 1145) and send the signed original and three yellow copies to the General Accounting Office for payment. Vouchers for settlement in excess of $25,000 will not be signed by any District Counsel, but will be forwarded to the General Counsel for signature and transmittal to the General Accounting Office. Also, in any case which is settled by the District Counsel at the specific request of the General Counsel, the voucher will not be approved by the District Counsel but will be sent to the General Counsel's Office for approval and processing. All original vouchers will be signed by the claimant or claimant's legal representative and his or her spouse, if appropriate. Where required by State law, approval of a court of competent jurisdiction will be obtained. Certified copies of appropriate court documents and duplicate originals of "hold harmless" and "covenant not to sue" agreements will accompany the transmittal of the voucher.

(3) If the claimant is a veteran, or the spouse or child of a veteran in a wrongful death claim, a copy of the letter to the General Accounting Office will be sent to the Adjudication Division of the regional office having jurisdiction over the veteran's claims folder.

(4) When a District Counsel is unable to effect settlement of a tort claim considered to be appropriate for compromise within authorized limits, the District Counsel will confer with the next level of supervising authority before issuing a letter of denial.

(d) *Attorney fees.* In any claim administratively settled or compromised, no specific portion of the award shall be designated as an attorney fee. However, 28 U.S.C. 2678 prohibits an attorney from charging, demanding, receiving, or collecting for services rendered, fees in excess of 20 per centum of any award, compromise, or settlement made pursuant to 28 U.S.C. 2672. Violation of this prohibition will subject the attorney to a fine of not more than $2,000 or imprisonment for not more than 1 year, or both. When a claimant is represented by an attorney, the voucher for payment shall designate as "payee" both the claimant and claimant's attorney and the check shall be delivered to the attorney whose address shall appear on the voucher.

(e) *Setoff for cost of unauthorized medical treatment.* In any tort claim administratively settled or compromised where the claimant owes the Veterans Administration for unauthorized medical treatment, there will be included in the tort claim award the amount of the claimant's indebtedness to the Government. The amount of the indebtedness is for credit to the appropriation account from which the services were provided. The voucher prepared for settlement of the claim will specify the amount to be deposited to the credit of the designated account and that the balance of the award be paid to the claimant.

[42 FR 41416, Aug. 17, 1977, as amended at 43 FR 2722, Jan. 19, 1978]

Litigated Claims

§ 14.609 Tort suits following denial of an administrative tort claim.

Where civil action against the United States follows denial of an administrative claim, the General Counsel, upon receipt of notice of the action, will furnish to the Department of Justice a copy of the investigation report and other related materials obtained in connection with the consideration of the administrative claim

previously submitted to the agency. The General Counsel will instruct the District Counsel to forward to the appropriate U.S. Attorney the investigation report and other related materials, including medical records and any other information, which may be appropriate to the litigation. The District Counsel will keep the General Counsel advised of subsequent developments, and will render assistance as requested by the U.S. Attorney and the General Counsel with respect to the defense of the suit.

[42 FR 41416, Aug. 17, 1977]

§ 14.610 Suits against Veterans Administration employees arising out of the operation of motor vehicles or based upon medical care and treatment furnished in or for the Department of Medicine and Surgery.

(a)(1) Section 2679 of title 28, United States Code, provides that no suit will lie against a Federal employee, or the employee's estate, for damage to property, personal injury, or death resulting from his or her operation of a motor vehicle while acting within the scope of his or her office or employment with the Federal Government. An action against the United States under 28 U.S.C. 2671-2680 is the exclusive remedy under these circumstances.

(2) Section 4116 of title 38, United States Code, provides that (i) where there is remedy against the United States under 28 U.S.C. 2671-2680, or (ii) where proceedings for compensation or other benefits from the United States are provided by law, and the availability of such benefits precludes a remedy under 28 U.S.C. 2671-2680 (as is the case, for example, in the Federal Employees' Compensation Act, 5 U.S.C. 8101, et seq.), such recourse is the exclusive remedy for property damage, personal injury, or death allegedly occurring as a result of malpractice or negligence committed by a physician, dentist, nurse, physician's assistant, dentist's assistant, pharmacist or paramedical (for example, medical and dental technicians, nursing assistants, and therapists), or other supporting personnel, while furnishing medical care and treatment in the exercise of duties in or for the Department of Medicine and Surgery. Accordingly, a malpractice or negligence suit for property damage, personal injury, or death will not lie against such personnel under the circumstances set forth in this subparagraph.

(b) The Department of Justice will defend any civil action or proceeding brought in any court against persons referred to in paragraph (a) (1) or (2) of this section under the circumstances set forth therein. Accordingly, when a suit is filed against any employee of the Veterans Administration (1) as a result of the employee's operation of a motor vehicle incident to employment with the Government, or (2) as a result of furnishing medical or dental care and treatment in or for the Department of Medicine and Surgery, the employee shall immediately forward a copy of all papers served on him or her to the District Counsel having jurisdiction over the area in which the employee works. The employee will also promptly forward to the appropriate District Counsel a signed statement indicating whether he or she desires the Department of Justice to provide representation, and to otherwise protect his or her interests as provided for by law. Even though there may not have been service, if an employee learns that a suit arising from either of the above-described circumstances has been filed against him or her, the employee shall immediately so advise the appropriate District Counsel, provide the District Counsel with a brief description of the facts unsolved, and state whether he or she desires Federal intervention.

(c) Upon receipt of notice that suit has been filed against an employee of the Veterans Administration who is entitled to protection under 28 U.S.C. 2679 or 38 U.S.C. 4116, the District Counsel having jurisdiction over the place where the employee works will conduct a preliminary investigation, which will include an affidavit by the employee's supervisor as to whether the defendant-employee was acting in the scope of his or her employment at the time of the incident, and a request from the defendant-employee for representation. The affidavit will contain a factual description of the employee's

duties and responsibilities at the time of the incident and should describe the incident in question. Upon receipt of such information, the District Counsel will make a preliminary determination as to whether such suit comes within the provisions of either 28 U.S.C. 2679 or 38 U.S.C. 4116. The District Counsel will refer the matter to the appropriate U.S. Attorney with a recommendation as to whether the employee is eligible for protection under 28 U.S.C. 2679 or 38 U.S.C. 4116. The U.S. Attorney will decide whether the Veterans Administration employee is eligible for the protection. The District Counsel will submit to the General Counsel a preliminary report in duplicate containing the information furnished the U.S. Attorney. In all such cases, the District Counsel will conduct a complete investigation of the facts and law. Two copies of the investigation report will be sent to the General Counsel and one copy will be sent to the appropriate U.S. Attorney. The General Counsel, through the District Counsel, will keep the employee advised of the action being taken concerning the suit. In the event that the U.S. Attorney or the Department of Justice determines that the employee is not eligible for immunization pursuant to one of the aformentioned provisions, the General Counsel's office, through the district Counsel, will advise the employee and will call to his or her attention the discretionary conditional indemnification provisions of section 4116(e) of title 38, United States Code.

(d) Where a civil action is commenced in a State court against a Veterans Administration employee, and the matter is within the purview of either 28 U.S.C. 2679, or 38 U.S.C. 4116, the Department of Justice will be asked to remove such suit to the appropriate Federal District Court before trial, where it will be deemed an action against the United States. The defendant employee will be dismissed from the suit. After such removal, the United States has available all defenses to which it would have been entitled if the action had originally been commenced against the United States in the proper Federal District Court. Should a Federal District Court determine that the Veterans Administration employee whose acts or omissions gave rise to the suit was not acting within the scope of his or her office or employement, and therefore not eligible for immunization as provided for in the aforementioned section, the case will be remanded to the State court from which it was removed, the employee will be reinstated as the defendant, and the United States will be dismissed from the suit. Where the employee has been reinstated as the defendant under such circumstances, in order to protect any rights which he or she may have under 38 U.S.C. 4116(e), he or she shall immediately notify the General Counsel, through the local District Counsel. Through the District Counsel, the General Counsel will call the employee's attention to the discretionary conditional indemnification provisions of section 4116(e).

(e) Under the authority of 38 U.S.C. 4116(e), the Administrator of Veterans Affairs may pay for monetary damages sustained by or assessed against an individual (or his or her estate) described in paragraph (a) (2) of this section, as the result of any suit instituted against such individual which is not congnizable under the provisions of 28 U.S.C. 2671-2680 because the individual was assigned to a foreign country, the said individual was detailed to a State or political division thereof, or the cause of action was specifically excluded under the provisions of 28 U.S.C. 2680(h); *Provided*, That the amount of damages sustained is reasonable when compared with similar cases, litigated or settled, and the United States was given a reasonable opportunity to defend such individual and to participate in settlement negotiations.

[42 FR 41417, Aug. 17, 1977]

Administrative Settlement of Tort Claims Arising in Foreign Countries

§ 14.615 General.

(a) *Authority.* Section 236, title 38, United States Code, provides that the Administrator of Veterans' Affairs may pay tort claims, in the manner authorized in the first paragraph of

section 2672 of title 28, United States Code, when such claims arise in foreign countries in connection with Veterans' Administration operations abroad.

(b) *Action by claimant.* Claims for property loss or damage may be filed by the owner of the property or his or her duly authorized agent or legal representative. If the property was insured and the insurer is subrogated, in whole or in part, and if both the owner and the insurer desire to file a claim for their respective losses they should join in one claim. Claims for personal injury may be filed by the injured person or his or her agent or legal representative. Claims for death may be filed by the personal representative of the decedent or any other legally qualified person. When filed by an agent or legal representative, the claim must show the title or capacity of the person representing the claimant and be accompanied by evidence of the appointment of such person as agent, legal representative, executor/executrix, administrator/administratrix, guardian, or other fiduciary.

(c) *Time for filing.* A claim may not be allowed under 38 U.S.C. 236 unless it is presented to the Administrator or his or her designee within 2 years after the claim accrues.

[38 FR 5473, Mar. 1, 1973, as amended at 42 FR 41417, Aug 17, 1977]

§ 14.616 Form and place of filing claim.

(a) *Form of claim.* Claims arising under 38 U.S.C. 236 will be prepared in the form of a sworn statement and submitted in duplicate. The original copy of the claim will be sworn to or affirmed before an official with authority to administer oaths or affirmations and will contain the following information, at least:

(1) The name and address of claimant;

(2) The amount claimed for injury or death, and for property loss or damage;

(3) If property was lost or damaged, the amount paid or payable by the insurer together with the name of the insurer;

(4) A detailed statement of the facts and circumstances giving rise to the claim, including the time, place, and date of the accident or incident;

(5) If property was involved, a description of the property and the nature and extent of the damage and the cost of repair or replacement based upon at least two impartial estimates;

(6) If personal injury was involved, the nature of the injury, the cost of medical and/or hospital services, and time and income lost due to the injury;

(7) If death is involved, the names and ages of claimants and their relationship to decedent;

(8) The name and official position of the employee of the United States allegedly responsible for the accident or injury, or loss or damage of property;

(9) The names and addresses of any witnesses to accident or incident; and

(10) If desired, the law applicable to the claim.

(b) *Place of filing claim.* Claims arising in the Philippines under 38 U.S.C. 236 will be filed with the Director, Veterans Administration Regional Office, Manila, Republic of the Philippines. Claims arising in other foreign countries will be filed with the American Embassy or Consulate nearest the place where the incident giving rise to the claim took place.

(c) *Evidence to be submitted by claimant*—(1) *General.* The amount claimed on account of damage to or loss of property or on account of personal injury or death shall, so far as possible, be substantiated by competent evidence. Supporting statements, estimates and the like will, if possible, be obtained from disinterested parties. All evidence will be submitted in duplicate. Original evidence or certified copies shall be attached to the original copy of the claim, and simple copies shall be attached to the other copy of the claim. All documents in other than the English language will be accompanied by English translations.

(2) *Personal injury or death.* In support of claims for personal injury or death, the claimant will submit, as may be appropriate, itemized bills for medical, hospital, or burial expenses actually incurred; a statement from the claimant's or decedent's employer as to time and income lost from work;

and a written report by the attending physician with respect to the nature and extent of the injury, the nature and extent of treatment, the degree of disability, the period of hospitalization or incapacitation, and the prognosis as to future treatment, hospitalization and the like.

(3) *Damage to personal property.* In support of claims for damage to personal property which has been repaired, the claimant will submit an itemized receipt, or, if not repaired, itemized estimates of the cost of repairs by two reliable parties who specialize in such work. If the property is not economically repairable, the claimant will submit corroborative statements of two reliable, qualified persons with respect to cost, age of the property and salvage value.

(4) *Damage to real property.* In support of claims for damage to land, trees, buildings, fences, or other improvements to real property, the claimant will submit an itemized receipt if repairs have been made, or, if repairs have not been made, itemized estimates of the cost of repairs by two reliable persons who specialize in such work. If the property is not economically repairable, the claimant will submit corroborative statements of two reliable, qualified persons with respect to the value of the improvements both before and after the accident or incident and the cost of replacements.

(5) *Damage to crops.* In support of claims for damage to crops, the claimant will submit an itemized signed statement showing the number of acres, or other unit measure of crop damaged, the probable yield per unit, the gross amount which would have been realized from such probable yield and an estimate of the costs of cultivating, harvesting and marketing the crop. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop will also be stated.

[38 FR 5473, Mar. 1, 1973, as amended at 42 FR 41418, Aug. 17, 1977]

§ 14.617 Disposition of claims.

(a) *Disposition of claims arising in Philippines.* All claims arising under 38 U.S.C. 236 in the Philippines, including a complete investigation report and a brief re1sume 1 of applicable law, will be forwarded directly by the Director to the General Counsel, together with a recommendation as to disposition.

(b) *Disposition of claims arising in foreign countries other than the Philippines.* When a claim is received in an American Embassy or Consulate, the Embassy or Consulate receiving such claim shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent material, including a re1sume 1 of applicable law and a recommendation regarding allowance or disallowance of the claim, through regular channels of the Department of State to the General Counsel, Veterans' Administration Central Office, Washington, D.C.

(c) *Payment of claims.* Upon determining that there is liability on the part of the United States under 38 U.S.C. 236, the General Counsel, or such other personnel as may be designated by the Administrator, will take the necessary action to effect payment.

[38 FR 5473, Mar. 1, 1973, as amended at 42 FR 41418, Aug. 17, 1977]

Claims for Damage to or Loss of Government Property

§ 14.618 Collection action.

(a) In a case where the District Counsel determines that damage to or loss of Government property under the jurisdiction of the Veterans' Administration resulted from the negligence or other legal wrong of a person other than an employee of the United States, while acting within the scope of his or her employment, the District Counsel will request payment in full of the amount of damage from the person liable therefor or such person's insurer.

(b) The District Counsel may collect, compromise, suspend, or terminate collection action on any such claim as is authorized under § 2.6(e)(4)(ii) of this chapter, in conformity with the standards in § 1.900 series of this chap-

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ter. Any such claim that has not been collected in full and which has not been compromised, suspended or terminated and does not exceed $20,000, will be referred by the District Counsel to the appropriate U.S. attorney along with the information required by §§ 1.951 through 1.953 of this chapter. Any claim in excess of $20,000 for which payment in full has not been made, will be transmitted along with the report required by § 14.605(a)(2)(i), a report on credit data (§ 1.952 of this chapter), and any other pertinent information, to the General Counsel for appropriate action.

(c) The General Counsel or those designated in § 2.6(e)(4) of this chapter will take action to collect in full on such claims and to compromise, suspend, or terminate any such claims not exceeding $20,000 in conformity with § 1.900 series of this chapter. Any such claims not compromised, or on which collection actions is not suspended or terminated and does not exceed $20,000, will be referred to the appropriate U.S. Attorney. Any such claims in excess of $20,000, which have not been collected in full, will be referred by the General Counsel to the Department of Justice for appropriate action.

(d) The provisions of paragraphs (a) through (c) of this section are not applicable to the collection of claims involving damage to General Services Administration Motor Pool System vehicles issued for Veterans' Administration use. Whenever there is any indication that a party other than the operator of a motor pool system vehicle is at fault in an accident, all documents and data pertaining to the accident and its investigation will be submitted to the General Services Administration Regional Counsel of the region that issued the vehicle who has jurisdiction over such matters. Whenever a motor pool system vehicle is involved in an accident, resulting in damage to the property of, or injury to the person of a third party, and the third party asserts a claim against the Veterans Administration based upon the alleged negligence of the vehicle operator, the claim will be considered under § 14.600 et seq.

[38 FR 5474, Mar. 1, 1973, as amended at 42 FR 41418, Aug. 17, 1977]

Claims for Cost of Medical Care and Services

§ 14.619 Collection action.

(a) In a case where the District Counsel determines that medical care and services were furnished as a result of the negligence of a third party, other than an employee of the United States while acting in the scope of his or her employment, the District Counsel will request payment in full of the amount of damage from the person liable therefor or such person's insurer.

(b) The District Counsel may collect, compromise, suspend, or terminate collection activity on any such claim as is authorized under § 2.6(e)(3) of this chapter. However, claims in excess of $40,000 may be compromised, settled, or waived only with the prior approval of the Department of Justice, which will be obtained through the General Counsel. Any such claim that has not been collected in full and which has not been compromised, suspended or terminated will be referred by the District Counsel to the appropriate U.S. Attorney along with appropriate information necessary to protect the interest of the Government. A copy of the referral to the U.S. Attorney will be sent to the General Counsel's office.

(c) In a case where the District Counsel determines that a claim is appropriate under the provisions of § 17.48(d) of this chapter for the cost of medical or hospital care furnished pursuant to § 17.47 (c)(1), (d), or (f) of this chapter to persons who are otherwise entitled to hospital care or medical or surgical treatment or to reimbursement for all or part of the cost thereof by virtue of any one or more of the following: Membership in an organization, rights under any medical insurance plan, or a medical rider on an automobile insurance policy, or by reason of a non-fault or worker's compensation or employer's liability or similar statue, State or Federal; right to maintenance and cure in admiralty; statutory or other relationship with third parties, including circumstances

where the Veterans Administration is a third party beneficiary of a contract; the District Counsel may collect, compromise, suspend, or terminate collection activity on any such claim not exceeding $40,000. Claims in excess of $40,000 may only be compromised, settled, or waived with the approval of the Department of Justice, which will be obtained through the General Counsel. Any such claim not compromised, or on which collection action is not suspended or terminated, will be referred to the appropriate U.S. Attorney with sufficient data to enable that office to protect the interest of the Government. A copy of all materials referred to the Department of Justice will be furnished the General Counsel.

[42 FR 41418, Aug. 17, 1977, as amended at 43 FR 10560, Mar. 14, 1978]

RECOGNITION OF ORGANIZATIONS, ACCREDITED REPRESENTATIVES, ATTORNEYS, AGENTS; RULES OF PRACTICE AND INFORMATION CONCERNING FEES, 38 U.S.C. CHAPTER 59

NOTE: The following pertains to claims for benefits, and not to matters concerning contracts, public, loan guaranty, or vocational rehabilitation and education.

REPRESENTATION OF VETERANS ADMINISTRATION CLAIMANTS; RECOGNITION OF ORGANIZATIONS, ACCREDITED REPRESENTATIVES, ATTORNEYS, AGENTS; RULES OF PRACTICE AND INFORMATION CONCERNING FEES, 38 U.S.C. 3401-3405

SOURCE: Sections 14.626-14.637 appear at 43 FR 46535—46537, Oct. 10, 1978, unless otherwise noted.

§ 14.626 Purpose.

The purpose of the regulation of representatives is to assure that claimants for Veterans' Administration benefits have qualified representation in the preparation, presentation, and prosecution of claims for veterans' benefits.

§ 14.627 Definitions.

As used in regulations on representation of Veterans' Administration claimants:

(a) "Agent" means a person who has met the standards and qualifications outlined in § 14.629(b).

(b) "Attorney" means a member in good standing of a State bar.

(c) "Cancellation" means termination of authority to represent claimants.

(d) "Claim" means application made under Title 38, United States Code, and implementing directives, for entitlement to Veterans' Administration benefits, reinstatement, continuation or increase of benefits, or the defense of a proposed agency adverse action concerning benefits.

(e) "Claimant" means a person who has filed a written application for determination of entitlement to benefits provided under Title 38, United States Code, and implementing directives.

(f) "National organization" means an organization chartered by act of the U.S. Congress or previously recognized by the Veterans Administration.

(g) "Recognition" means certification by the Veterans' Administration of organizations, their representatives, attorneys, and agents, to represent claimants.

(h) "Representative" means a person who has been recommended by a recognized organization and certified by the Veterans' Administration.

(i) "State" includes any State, possession, territory, Commonwealth, or the District of Columbia.

(j) "Suspension" means temporary withholding of authority to represent claimants.

§ 14.628 Requirements for recognition of organizations.

Authorized officers of an organization may request recognition by letter to the Administrator of the Veterans' Administration.

(a) *National organizations.* An organization chartered by act of Congress may be recognized as a national organization in the presentation of claims under the laws administered by the Veterans' Administration.

(b) *State organizations.* State organizations created for the purpose of serving the needs of veterans of that State may be recognized. Only one

such organization may be recognized in each State.

(c) *Other organizations.* Organizations other than State and National organizations as set forth in paragraphs (a) and (b) of this section may be recognized when the Veterans Administration has determined that they are veterans service organizations primarily involved in delivering services connected with either title 38, United States Code benefits and programs or other Federal and State programs designed to assist veterans. The term "veteran" as used in this paragraph shall include veterans, former armed forces personnel and the dependents of either. Further, the organizations shall provide responsible, qualified representation in the preparation, presentation and prosecution of claims for title 38, United States Code benefits.

(d) *Requirements for recognition.* In order to be recognized under paragraph (c) of this section the organization:

(1) Shall have as a primary purpose, services to veterans; and

(2) Shall demonstrate a substantial service commitment to veterans either by showing a sizable organizational membership or by showing performance of those veterans' services to a sizable number of veterans; and

(3) Shall devote an appreciable portion of its assets to veterans' services; and

(4) Shall establish either that complete claims service will be provided to each veteran requesting representation, or shall give written notice of any limitation in its claims service with advice concerning alternate service. Complete claims service includes the ability to assure representation before the Board of Veterans Appeals. However, representation before the Board of Veterans Appeals may be provided by agreement with another organization recognized by the Veterans Administration; and

(5) Shall take affirmative action, such as training and monitoring of its recognized representatives, to ensure proper handling of claims.

(e) *Information to be submitted.* In order to be recognized under paragraph (c) of this section, the following information shall be supplied:

(1) *Purpose.* A statement outlining the purpose of the organization, the extent of services provided, and the manner in which veterans would benefit by recognition.

(2) *Service commitment.* (i) The number of members and number of posts, chapters, or offices and their addresses; and

(ii) A copy of the articles of incorporation, constitution, charter, and bylaws of the organization, as appropriate; and

(iii) The type of title 38, United States Code services performed with an approximation of the number of veteran and dependent clients served by the organization in each type of service designated; and/or

(iv) the type of services performed in connection with other Federal and State programs which are designed to assist former armed forces service personnel and their dependents, and an approximation of the number of veteran and dependent clients served by the organization under each program designated.

(3) *Assets.* (i) A copy of the last financial statement of the organization indicating the amount of funds allocated for conducting veterans' services; and

(ii) A statement of the skills, training and other qualifications for handling veterans' claims of paid or volunteer staff positions.

(4) *Complete claims service.* (i) The record of representation before a discharge review board or the Veterans Administration, or other proof of ability to present claims before the Veterans Administration; and

(ii) Some proof of capability to provide representation before the Board of Veterans Appeals; or

(iii) The proof of association or agreement for the purpose of representation before the Board of Veterans Appeals with another recognized service organization, or the proposed method of informing claimants of the limitations in service that can be provided, with advice concerning alternate service.

(5) *Affirmative action.* The organization shall execute an agreement which

states that it shall take affirmative action, such as training and monitoring of its recognized representatives to ensure proper handling of claims.

(6) *Other.* (i) A statement that neither the organization nor its representatives will charge or accept a fee or gratuity for service to a claimant; and

(ii) The names, titles, and addresses of officers and the officials authorized to certify representatives; and

(iii) The names, titles, and addresses of full-time paid employees who are qualified to act as accredited representatives.

(f) *Recognition or denial.* A notice of recognition will be sent within 90 days of receipt of all information to be supplied. However, if recognition is denied an organization, the Veterans Administration will set forth an explanation of the reasons for denial. A denial of recognition may be appealed to the Administrator within 90 days of the denial. The Veterans Administration will consider the appeal within 30 days of receiving such request. The organization will have an opportunity to fully document its position, and the appeal will cover all aspects of the application for recognition and denial.

§ 14.629 Requirements for recognition of representatives, agents, and attorneys.

The District Counsel will resolve any question of current qualifications of a representative, agent or attorney. The claimant; the representative, agent or attorney, or an official of the organization for which they would act; or the appropriate Veterans Administration official may appeal such determination to the General Counsel.

(a) *Representatives.* Recognized organizations shall file with the Office of the General Counsel VA Form 2-21 (Application for Accreditation as Service Organization Representative) for each person they desire recognized as a representative of that organization. In recommending a person, the organization shall certify that the designee:

(1) Is of good character and reputation; and:

(i) Has successfully completed a Veterans Administration approved course of instruction on veterans' benefits; or

(ii) Has passed an examination approved by the Veterans Administration; or

(iii) Has otherwise demonstrated an ability to present claims before the Veterans Administration;

(2) Is either a member in good standing or a full-time paid employee of such organization, or is recognized and functioning as a representative of another recognized organization;

(3) Is not employed in any civil or military department or agency of the United States.

(b) *Agents.* Individuals desiring recognition as agents must file an application with the Office of General Counsel and establish that they are of good character and reputation. In addition, applicants shall pass a written examination concerning laws administered by the Veterans Administration which shall be prepared and graded in the Office of General Counsel. The examination may, however, be taken at any convenient District Counsel office under the supervision of the District Counsel.

(c) *Attorneys.* Attorneys shall state in writing on their letterhead that they are authorized to represent the claimant in order to have access to information in the claimant's file pertinent to the particular claims presented. For an attorney to have complete access to all information in an individual's records, the attorney must provide a signed consent from the claimant or the claimant's guardian. The consent shall be equivalent to an executed power of attorney. (38 U.S.C. 3401; 3404).

§ 14.630 Authorization for a particular claim.

Any person may be authorized to prepare, present, and prosecute a particular claim. A proper power of attorney, and a statement signed by the person and the claimant that no compensation will be charged or paid for the services, shall be filed with the office where the claim is presented. A person recognized under this section shall represent only one claimant; however, in unusual circumstances, appeal of such limitation may be made

to the General Counsel. (38 U.S.C. 3403).

§ 14.631 Powers of attorney.

(a) A power of attorney, executed on either VA Form 23-22 (Appointment of Veterans Service Organization as Claimant's Representative) or VA Form 2-22a (Appointment of Attorney or Agent as Claimant's Representative), is required to represent a claimant, except when representation is by an attorney who complies with § 14.629(c). The power of attorney shall meet the following requirements:

(1) Contain signature by:

(i) The claimant, or

(ii) The claimant's guardian, or

(iii) In the case of an incompetent, minor, or otherwise incapacitated person without a guardian, the following in the order named—spouse, parent, other relative or friend (if interests are not adverse), or the director of the hospital in which the claimant is maintained; and

(2) Shall be presented to the appropriate Veterans Administration office for filing in the veteran's claims folder.

(b) Questions concerning powers of attorney shall be referred to the District Counsel of jurisdiction for initial determination. This determination may be appealed to the General Counsel.

(c) Only one organization, agent, or representative will be recognized at one time in the prosecution of a claim for one specific benefit. All transactions concerning the claim will be conducted exclusively with the recognized organization, agent, or representative of record until notice of a change, if any, is received by the Veterans Administration.

(d) A power of attorney may be revoked at any time and an attorney may be discharged at any time. A new power of attorney shall constitute a revocation of any existing power of attorney.

(e) The authority which a power of attorney provides may be continued for a reasonable time after the death of the claimant, to determine whether the claim will be continued by a new claimant and whether a new power of attorney will be executed. (38 U.S.C. 3402, 3403, 3404).

§ 14.632 Letters of recognition.

If challenged, the qualifications of prospective representatives or agents shall be verified by the District Counsel of jurisdiction. The report of the District Counsel, if any, including any recommendation of Veterans Administration station directors, and the application shall be transmitted to the General Counsel for final action. If the designee is disapproved by the General Counsel, the reasons will be stated and an opportunity will be given to submit additional information. If the designee is approved, letters of recognition, or an identification card, will be issued by the General Counsel, and will constitute authority to prepare, present, and prosecute claims in all Veterans Administration installations. Record of recognition will be maintained in the Office of General Counsel. (38 U.S.C. 3402).

§ 14.633 Termination of recognition.

(a) Recognition may be canceled at the request of an agent, attorney, representative, or organization.

(b) Recognition shall be canceled at such time a determination is made that the requirements of § 14.629 are no longer met by an agent, attorney or representative.

(c) Recognition shall be canceled upon a finding by the General Counsel, by clear and convincing evidence, of one of the following:

(1) Violation or refusal to comply with the laws administered by the Veterans Administration or with the regulations governing practice before the Veterans Administration.

(2) Knowingly presenting or prosecuting a fraudulent claim against the United States.

(3) Demanding or accepting unlawful compensation for preparing, presenting, prosecuting, or advising or consulting, concerning a claim.

(4) Any other unlawful, unprofessional or unethical practice. (Unlawful, unprofessional or unethical practice shall include but not be limited to the following—deceiving, misleading or threatening a claimant or prospective

claimant, neglecting to prosecute a claim for 6 months or more; failing to furnish evidence within 90 days of request by the Veterans Administration, or willfully withholding an application for benefits.)

(d) As to cancellation of recognition under paragraph (c) of this section, upon receipt of information indicating improper conduct, the District Counsel of jurisdiction shall initiate an inquiry into the matter.

(1) If the result of the inquiry does not justify further action, the District Counsel will close the inquiry and maintain the record for 3 years.

(2) If the result of the inquiry justifies further action, the District Counsel shall take the following action:

(i) As to representatives, suspend recognition immediately and notify the representative of the suspension, stating the reason(s) therefore. The National Organization shall be notified of the suspension. The notice to the representative will also inform the representative of a right to request a hearing on the matter or to submit additional evidence within 10 working days following receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

(ii) As to agents or attorneys, inform the General Counsel of the result of the inquiry and notify the agent or attorney of an intent to cancel recognition. The notice will also state the reason(s) for the impending cancellation and inform the party of a right to request a hearing on the matter or to submit additional evidence within 10 working days of receipt of such notice. Such time may be extended for a reasonable period upon a showing of sufficient cause.

(iii) In the event that a hearing is not requested, nor additional evidence submitted by the agent, attorney or representative, the District Counsel shall forward the record to the General Counsel for final determination.

(e) If a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the District Counsel's office will present the evidence. The party requesting the hearing will have a right to counsel, to present evidence, and to cross-examine witnesses. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. The District Counsel will then submit the entire case within 10 working days after the close of the hearing to the General Counsel for decision.

(f) The decision of the General Counsel is final. The effective date for termination of recognition shall be the date upon which a final decision is rendered. The records of the case will be maintained in the General Counsel's office for 3 years. (38 U.S.C. 3402, 3404, 3405).

[45 FR 47679, July 16, 1980]

§ 14.634 Fees and expenses

Accredited representatives of national, State or other recognized organizations and individuals recognized for a particular claim shall not be entitled to receive fees. Attorneys and agents are entitled to receive fees as provided by statute. (38 U.S.C. 3404(c)).

(a) *Amount of fees.* For the successful prosecution of claims, attorneys and agents may receive the fee permitted by statute. The fee will be paid to the attorney or agent of record at the time of allowance, by deduction from the benefit allowed, after approval by the Veterans Administration. Questions concerning the amount or proper payee of fees allowed will be resolved by the District Counsel, or designee, who will consider the quality, nature, and extent of the services.

(b) *Expenses.* Without regard to entitlement to fees, an agent, attorney, or other person who incurs an expense in the prosecution of a claim, may submit a sworn itemized account of the expense to the Veterans Administration. It will be retained in the claims folder as part of the permanent record. Payment of expenses is the responsibility of the claimant; however, before demanding or receiving reimbursement from the claimant, the expense shall be approved by the District Counsel, or designee. Notice of the action taken shall be transmitted to the requestor

by the service handling the claim. (38 U.S.C. 3404).

§ 14.635 Reconsideration of denial of fees and expenses.

A request for reconsideration of a denied fee, or statement of expenses, must be received by the General Counsel within 1 year of the date of denial. If agreement cannot be reached and a hearing is requested, a hearing officer will be appointed by the Director of the regional office involved. The hearing officer shall not be from the Office of the District Counsel. The hearing officer will have authority to administer oaths. A member of the District Counsel's office will present the evidence. The complainant will have a right to counsel, to present evidence and to cross-examine witnesses. The hearing shall be conducted in an informal manner and court rules of evidence shall not apply. Testimony shall be recorded verbatim. Within 10 working days after the close of the hearing, the District Counsel will submit the entire case to the General Counsel. The decision of the General Counsel is final.

§ 14.636 Banks or trust companies acting as guardians.

Banks or trust companies, corporate entities, acting as guardians for claimants, may be represented before adjudicating agencies as authorized representatives of claimants by an officer or employee, including a regularly employed attorney, if the employee or attorney represents the corporation in its fiduciary capacity. No fee shall be allowed for such services under § 14.634(a).

§ 14.637 Space and office facilities.

The Administrator may furnish space and office facilities, if available, for the use of paid full-time representatives of recognized national organizations. (38 U.S.C. 3402).

PERSONNEL CLAIMS

§ 14.664 Scope of authority and effective date.

Pub. L. 88-558 (78 Stat. 767), approved August 31, 1964, as amended, authorizes the Administrator or the Administrator's designee to settle and pay a claim for not more than $15,000 made by a civilian officer or employee of the Veterans Administration for damage to, or loss of personal property incident to such person's service. Authority is delegated by § 2.6(e)(5) of this chapter to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), and the Deputy Assistant General Counsel, of said staff group and the District Counsel and those acting for them to settle and pay such claims on behalf of the Administrator, and such settlement shall be final and conclusive.

[42 FR 41421, Aug. 17, 1977]

§ 14.665 Claims.

(a) The claim must be presented in writing on VA Form 2-4760, Employee's Claim for Reimbursement for Personal Property Damaged or Lost Incident to Employment. It will be submitted to the personnel office where the claim originates within 2 years after it accrues except that if the claim accrues in time of war or in time of armed conflict in which any Armed Force of the United States is engaged or if such war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after that cause ceases to exist. The claim must be executed and certified by the officer or the employee suffering the loss or damage, or in the event of his or her death, by the surviving spouse, children, father or mother or both, or brothers or sisters or both. Claims of survivors shall be settled and paid in the order named. All claims must contain the following:

(1) The date, time, and place the loss or damage occurred and the circumstances surrounding such loss or damage, together with the supporting statements of any witnesses who can verify such facts.

(2) In the event of damage, the date of acquisition, original cost, condition before damage, and at least two estimates of the cost of repair or replacement. In the event of loss, the date of acquisition, the original cost, the condition, and an estimate of the reason-

able market value of the article or articles.

(3) A statement as to any claims or potential claim he or she may have for indemnification of the loss or damage against other than the United States and whether he or she will assign such to the United States and cooperate in its prosecution. Where such claim or potential claim is against a carrier or insurer, evidence that a timely claim has been properly made. Where a recovery from the carrier or his or her insurer has been obtained or offered, such information shall be included.

(4) In cases involving damage or destruction of personal property by patients or domiciliary members, a statement as to whether a claim was filed pursuant to 38 U.S.C. 233(a)(5) and whether such claim has been finally denied.

(b) The Personnel Officer receiving the claim will forward same to the person designated to investigate accidents at the station pursuant to § 14.605 within 5 days after receipt.

(c) The employee designated pursuant to § 14.605 will ascertain if such claim is complete in all respects and conduct such investigation as is necessary to establish all facts required to properly evaluate the claim both as to merit and the reasonable amount payable for the loss or damage. Where it is indicated that the claimant may have a potential claim against other than the United States, the employee designated will secure a suitable assignment of all right and title to such claim, to the extent the United States makes reimbursement, and the agreement of the claimant to furnish such evidence as may be necessary to pursue such claim. If the potential claim is against a carrier or insurer, the employee designated will ascertain that the claimant has filed a timely proper claim and procure evidence thereof. The employee designated will also include information concerning any offer of settlement the carrier may have made. The completed investigation, original claim and supporting evidence will be forwarded to the appropriate District Counsel.

[38 FR 5475, Mar. 1, 1973, as amended at 42 FR 41421, Aug. 17, 1977]

§ 14.666 District Counsel responsibility.

(a) The District Counsel having jurisdiction will conduct such additional investigation as is deemed necessary to establish all facts required. If the claimant has a potential claim for indemnification against other than the United States, the District Counsel will ascertain that a suitable assignment, legally enforceable, of all right and title to such claim, to the extent the United States makes reimbursement, and the agreement of the claimant to furnish such evidence as may be necessary to pursue such claim is of record. If such potential claim is against a carrier or insurer, the District Council will ascertain that claimant has filed a timely proper claim against the carrier or insurer and review same for legal sufficiency.

(b) The District Counsel having jurisdiction over a claim will not authorize payment thereon unless the requirement of §§ 14.664 through 14.667 are met. In determining the equitable value of a claim, the depreciation schedule issued by the General Counsel will be used as a guide.

[42 FR 41422, Aug. 17, 1977]

§ 14.667 Claims payable.

(a) No claim shall be paid unless timely filed in proper form as provided in § 14.665 and the preponderance of the evidence establishes that the loss or damage:

(1) Actually occurred and the amount claimed is reasonable,

(2) Was incident to the employee's service and his or her possession of the property was reasonable, useful, or proper under the circumstances,

(3) Did not occur at quarters occupied within the 50 States or the District of Columbia that were not assigned to the claimant or otherwise provided in kind by the United States.

(4) Was not caused wholly or partly by the negligent act of claimant, the claimant's agent, or employee, and that the claimant has no right to indemnification for the loss or damage from other than the United States, except to the extent that the claimant assigns such right to the United States and agrees to furnish evidence required to enable the United States to

enforce such right. In the event there is a right to recovery for the loss or damage from a carrier or insurer the claimant will be required to file a timely claim for such recovery before consideration of the claim against the United States.

(b) No claim for the cost of repair or replacement of personal property of employees damaged or destroyed by patients or domiciliary members while such employees are engaged in the performance of official duties shall be entertained under §§ 14.664 through 14.667, unless claim filed pursuant to 38 U.S.C. 233(a)(5) (§ 17.78 of this chapter) has been finally denied for the reason that such claim did not meet the criteria established by that law.

[38 FR 5475, Mar. 1, 1973, as amended at 42 FR 41422, Aug. 17, 1977]

§ 14.668 Disposition of claims.

(a) *Disallowed claims.* Claimants will be promptly notified of the disallowance of a claim and the reasons therefor.

(b) *Allowed claims*—(1) *Reimbursement in kind.* Where a claim is allowed and it is determined to be to the advantage of the Government, reimbursement will be made in kind. The official authorizing settlement will request the Director, Supply Service, Department of Medicine and Surgery, to procure the necessary article or articles and deliver same to the claimant.

(2) *Reimbursement by check.* The official authorizing settlement will forward allowed claims, other than those requiring reimbursement in kind, to the Finance activity at the Veterans Administration installation where the claim arose. That activity will audit the claim, which if found proper for payment, will be scheduled on SF 1166, Voucher and Schedule of Payments, and forwarded to the appropriate Regional Disbursing Office for payment.

[38 FR 5475, Mar. 1, 1973, as amended at 42 FR 41422, Aug. 17, 1977]

§ 14.669 Fees of agents or attorneys; penalty.

The Military Personnel and Civilian Employees' Claims Act of 1964 (Public Law 88-558; 78 Stat. 767) was amended by Public Law 89-185 (79 Stat. 789), on September 15, 1965, by adding a new section which provided that no more than 10 percent of the amount paid in settlement of each individual claim submitted and settled under the authority of the Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. Any person violating the provisions of this Act is deemed to be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

[38 FR 5475, Mar. 1, 1973]

COMMITMENTS—FIDUCIARIES

SOURCE: Sections 14.700 to 14.709 appear at 42 FR 41422, Aug. 17, 1977, unless otherwise noted.

§ 14.700 Court cost and expenses; commitment, restoration, fiduciary appointments.

It is the responsibility of the District Counsel to assure the protection of the veteran, his or her beneficiaries, and their estates in State court proceedings involving commitment and restoration, and the appointment of fiduciaries. To this end certain expenses such as court costs, publication fees, recording fees, transportation expenses and fees for medical testimony may be authorized by the District Counsel. Payment of these costs will be borne by the department concerned. However, every effort will be made by the District Counsel to avoid having these costs imposed on the Veterans Administration. The travel and per diem cost of the District Counsel personnel will be borne by the District Counsel.

§ 14.701 Commitment and restoration proceedings.

(a) *State institutions.* District Counsels are authorized to cooperate with State courts, including the production of required records in the commitment

of veterans to State hospitals or in their restoration to full civil rights.

(b) *Veterans Administration institutions*—(1) *Assistance to courts in commitment proceedings.* The District Counsel will render assistance to the courts in cases involving the commitment of mentally ill veterans to the Veterans Administration. To this end, the District Counsel may:

(i) Produce Veterans Administration records.

(ii) Appear in court and present material facts.

(iii) When authorized to institute commitment proceedings under paragraph (b)(2) of this section, prepare and present all necessary legal papers, and arrange and authorize transportation costs of veterans and attendants at Veterans Administration expense (§§ 14.703 and 14.704).

(2) *Commitment proceedings.* If a mentally ill veteran will accept hospitalization voluntarily, no action will be initiated by any Veterans Administration employee to commit such veteran. If the veteran will not accept hospitalization, or after being voluntarily hospitalized by the Veterans Administration demands his or her release, and hospitalization is necessary for the veteran's safety or the safety of others, the District Counsel (if a relative of the veteran or other interested person has not done so) may institute proceedings to commit the veteran to the Veterans Administration subject to the following conditions:

(i) That the written consent of the veteran's nearest relative has been obtained. If the nearest relative cannot be readily contacted or refuses to consent, coupled with inability or refusal to offer adequate alternative care, the District Counsel may initiate the action if the petition is signed by another relative, a civil official or representative of a cooperating agency or other person authorized by State law.

(ii) If timely action cannot be taken under paragraph (b)(2)(i) of this section, the Hospital or Clinic Director, or designee, may sign the petition if permissible under State law, and the District Counsel will then take any action necessary to bring the matter before the appropriate court.

(3) *Illegal commitment.* When a hospitalized veteran, previously committed to the Veterans Administration, demands release and continued hospitalization is necessary for the veteran's safety or the safety of others, and the District Counsel determines the commitment to be illegal, immediate action will be taken to obtain a legal commitment.

(4) *Restoration proceedings.* When a veteran has been a committed patient in a Veterans Administration hospital and is subsequently rated competent by the Veterans Administration, the District Counsel upon request, may institute proceedings necessary to restore the veteran to full civil rights.

§ 14.702 Medical testimony in commitment or restoration proceedings.

(a) *Commitment.* When permissable under State law, Veterans Administration physicans, upon request of the District Counsel, will sign interrogatories or certificates of mental illness or insanity and, unless unavailable, as provided in paragraph (c) of this section, will testify in proceedings which the District Counsel is authorized to institute under § 14.701 to commit eligible veterans to the Veterans Administration.

(b) *Restoration.* (1) When permissible under State law, Veterans Administration physicans, upon the request of the District Counsel, will testify in proceedings brought for the purpose of restoring a committed veteran to full civil rights when the veteran is a committed patient in a Veterans Administration hospital.

(2) The Director of a Veterans Administration hospital or the District Counsel upon discharge of the veteran, may furnish a certificate of sanity or such similar certificate to the proper civil authorities.

(c) *Employment of private physicians.* When testimony of Veterans Administration physicians is prohibited or is unavailable because of a duty assignment, comparative expense or other valid reason, the Director of the Veterans Administration hospital, upon recommendation of the District Counsel, may employ any qualified physician for preliminary examination

of the veteran and for testimony in any commitment or restoration proceeding which the District Counsel is authorized to institute under § 14.701, and authorize the payment of a fee not to exceed the prescribed fee, or in the absence thereof, the customary fee charged for the service rendered.

§ 14.703 Costs in commitment or restoration proceedings.

(a) When authorized to institute a proceeding under § 14.701, the District Counsel may authorize in advance or thereafter the payment or reimbursement of costs and other expenses for which the veteran is legally liable, including publication of notice necessary to accomplish the commitment.

(b) The District Counsel also may authorize the payment of necessary costs and expenses for which the veteran is legally liable incident to his or her restoration to full civil rights in any case in which the District Counsel ia authorized to institute restoration proceedings under § 14.701(b)(4).

§ 14.704 Authorization of transportation necessary for commitment of a veteran beneficiary.

When a mentally ill veteran who should be committed is hospitalized by the Veterans Administration and under the law of the State wherein the hospital is located, a commitment may not be had locally, the veteran may be returned temporarily to the jurisdiction of the appropriate court in order that the commitment can be accomplished. If the veteran is in a Veterans Administration hospital, the Hospital Director may authorize travel of the veteran and an attendant or attendants, if necessary, upon request of the District Counsel. If the veteran is being maintained in a non-Veterans Administration hospital, the Director of the facility authorizing and paying for the care may authorize such travel upon request of the District Counsel.

§ 14.705 Authority to file petitions for appointment of fiduciaries in State courts.

(a) *Adult beneficiary.* The District Counsel is authorized to file or cause to be filed on behalf of a petitioner in a case coming within § 14.706(a) a petition for the appointment of a fiduciary and all necessary legal papers for an adult beneficiary only if it has been determined that alternative methods of payment would not be to the best interests of the beneficiary and when the District Counsel has obtained the written consent of:

(1) The beneficiary's spouse.

(2) The beneficiary's adult child, parent, adult brother or sister if the beneficiary is unmarried, or consent of the spouse is immaterial because of estrangement or mental incapacity, or refusal to consent coupled with failure to offer adequate alternative means for providing for the beneficiary's needs.

(3) A civil official or representative of a cooperating agency when none of the relative listed in paragraph (a) (1) and (2) of this section can be located after reasonable inquiry or those located are not mentally competent to consent or refuse without offering adequate alternative means for providing for the needs of the beneficiary.

(b) *Minor beneficiaries.* The District Counsel is authorized to file or cause to be filed on behalf of a petitioner in a case coming within § 14.706(a) a petition for the appointment of a fiduciary for a minor. If permissible under the law of the jurisdiction concerned and if it has been determined that protection of the minor's rights under laws administered by the Veterans Administration requires the appointment, provided: the written consent of the minor's natural or adoptive parent or parents or the person or persons occupying the relationship of "in loco parentis" as defined, by the law of the jurisdiction, in which they reside has been obtained. The District Counsel will not institute a court proceeding for the appointment of a fiduciary over the objections of such parent or parents if they are sui juris unless the parent or parents have abandoned the minor or have otherwise refused to meet their parental obligations toward the minor or they have previously been appointed or recognized as the minor's fiduciary and failed to properly execute the duties of their trust. If the minor has no parent or the parent or parents are not sui juris, the Dis-

trict Counsel may file the petition without the consent of any relative.

(c) *Court-appointed fiduciaries.* In court-appointed fiduciary cases, the District Counsel may appear in the court of appointment or in any court having original, concurrent, or appellate jurisdiction, and make proper presentation relating to the foregoing matters. The Distrtict Counsel's authority includes by is not limited to:

(1) Petitioning the court to cite a fiduciary to account;

(2) Filing exceptions to accountings;

(3) Requiring fiduciaries to file bonds or make any necessary adjustments;

(4) Requiring investments;

(5) Filing petitions to vacate or modify court orders;

(6) Appearing or intervening in any State court as attorney for the Administrator of Veterans Affairs in litigation instituted by the Administrator or otherwise affecting money paid to such fiduciary by the Veterans Administration;

(7) Incurring necessary court costs and other expenses, including witness fees, appeal bonds, advertising in any newspaper or other publication, preparing briefs or transcripts, purchase of records of trial or other records;

(8) Instituting any other action necessary to secure proper administration of the estate of a Veterans Administration beneficiary, such as filing petitions for the removal of a fiduciary and appointment of a successor;

(9) Taking appropriate action to recover funds improperly disbursed.

(d) *Appeal.* Unless a trial is de novo, no appeal shall be taken to an appellate court and no costs incurred in connection therewith without the prior approval of the General Counsel and the Chief Benefits Director or their designees.

§ 14.706 Legal services in behalf of beneficiaries.

(a) The District Counsel may furnish legal services in behalf of minor and incompetent beneficiaries of the Veterans Administration in fiduciary appointment and estate administration matters involving Veterans Administration benefits or property derived therefrom when the beneficiary's estate or income is not sufficient to justify the employment of an attorney.

(b) The District Counsel may also furnish legal services in hardship situations when restoration from legal disability is a condition of precedent to direct payment of Veterans Administration benefits.

(c) Where the fiduciary does not in due course institute the necessary action to terminate the trust relationship and the beneficiary requests representation by the District Counsel or in any such case where there is in question the proper administration of the estate, the District Counsel may file the necessary action and supply legal services. Costs, unless assessed against the fiduciary, should be charged to the estate of the beneficiary.

§ 14.707 Authorization of transportation of a veteran beneficiary for appointment of a fiduciary.

When the appointement of a fiduciary is required for an incompetent veteran hospitalized by the Veterans Administration and, under the law of the State wherein the hospital is located, the appointment cannot be had locally, the veteran may be returned temporarily to the jurisdiction of the appropriate court in order that the appointment can be accomplished. If the veteran is in a Veterans Administration hospital, the Hospital Director, upon request of the District Counsel, may authorize travel of the veteran and an attendant or attendants, if necessary. If the veteran is being maintained in a non-Veterans Administration hospital, the Director of the facility authorizing and paying for the care may authorize such travel upon request of the District Counsel.

§ 14.708 Costs and other expenses incident to appointment of fiduciary.

(a) The District Counsel may authorize the payment of costs and other necessary expenses incident to the appointment of an initial or successor fiduciary for a Veterans Administration beneficiary when:

(1) Authorized to render legal services under § 14.706.

(2) Appointment was caused by the Veterans Administration and it develops that no benefits are payable and there is no estate from which costs may be paid.

(3) Costs must be advanced when there is no immediate estate from which same may be paid. These costs are to be recovered from benefits payable unless the case falls within paragraph (a)(1) of this section.

(b) Costs and necessary expenses include:

(1) All those chargeable by statute or rule of court and certified by the clerk of court.

(2) Certified copies of court records required by the Veterans Administration.

(3) Fees for guardian ad litem when chargeable as court costs and required by State law.

§ 14.709 Surety bonds; court-appointed fiduciary.

(a) It is the policy of the Veterans Administration to require, where possible under State laws and rules of the court, corporate surety bonds in all court-appointed fiduciary cases where the fiduciary is an individual and the estate is sufficient to justify the expense of procuring a corporate surety bond. Corporate bonds may be required of corporate fiduciaries in accordance with State laws. In cases wherein fiduciaries neglect or refuse to furnish corporate bonds, as requested by the District Counsel, the District Counsel should take appropriate court action and notify the Veterans Services Officer.

(b) When it is not practical or feasible to require a fiduciary to furnish a corporate surety bond, the District Counsel is authorized to accept bonds with such number of personal sureties as is permissible under State law, but in no event less than one. To be acceptable for Veterans Administration purposes, each personal surety must be worth at least the penal sum named in the bond over and above all debts, liabilities and exemptions and qualify in accordance with the requirements of State law. The District Counsel will request suitable evidence of financial responsibility whenever there is any question as to the ability of a personal surety to meet any probable liability. When suitable evidence is not furnished as requested, or financial responsibility is found to be insufficient to meet the penal sum of the bond, the District Counsel should take appropriate court action and notify the Veterans Services Officer.

(c) It is the policy of the Veterans Administration to require surety bonds in an amount commensurate with value of the personal estate derived from Veterans Administration benefits plus the anticipated net income from Veterans Administration benefits received during the ensuing accounting period. In cases where the fiduciaries neglect or refuse to furnish surety bonds in the amount requested by the District Counsel, the District Counsel should take appropriate court action and notify the Veterans Service Officer. When permissible under State law, the District Counsel may accept, without objection, a lesser degree of protection approved by the court when it is determined that such action will adequately protect the beneficiary's estate.

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AUTHORITY: 72 Stat. 1114; 38 U.S.C. 210, unless otherwise noted.

DEFINITIONS AND ACTIVE DUTY

§ 17.30 Definitions.

When used in Veterans Administration Medical regulations, each of the following terms shall have the meaning ascribed to it in this section:

(a) *Veteran.* The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(b) *Armed Forces.* The term "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof.

(c) *Active military, naval, or air service.* See §§ 17.31 and 17.32.

(d) *Discharge or release.* The term "discharge or release" includes retirement from the active military, naval, or air service.

(e) *Veteran of any war.* The term "veteran of any war" means any veteran who served in the active military, naval, or air service during a period of war and includes any veteran of the Indian wars, or any veteran awarded the Medal of Honor, Public Law 88-481.

(f) *Period of war.* The term "period of war" means each of the Indian wars, the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era and the period beginning on the date of any future declaration of war by the Congress and ending on a date prescribed by Presidential proclamation or concurrent resolution of the Congress.

(g) *Spanish-American War.* The term "Spanish-American War" (1) means the period beginning on April 21, 1898, and ending on July 4, 1902, (2) includes the Philippine Insurrection and the Boxer Rebellion, and (3), in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on April 21, 1898, and ending on July 15, 1903.

(g-1) *Mexican border period.* The term "Mexican border period" means the period beginning on May 9, 1916, and ending on April 5, 1917, in the case of a veteran who during such period served for 90 days or more in Mexico, on the borders thereof, in the waters adjacent thereto, or any combination thereof.

(h) *World War I.* The term "World War I" (1) means the period beginning on April 6, 1917, and ending on November 11, 1918, and (2), in the case of a veteran who served with the United States military forces in Russia, means the period beginning on April 6, 1917, and ending on April 1, 1920.

(i) *World War II.* The term "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946.

(j) *Korean conflict.* The term "Korean conflict" means the period beginning on June 27, 1950, and ending on January 31, 1955.

(k) *Vietnam era.* The term "Vietnam era" means the period beginning August 5, 1964, and ending on May 7, 1975. (38 U.S.C. 101(29))

(l) *Hospital care.* The term "hospital care" includes:

(1) Medical services rendered in the course of hospitalization of any veteran and transportation and incidental expenses pursuant to the provisions of § 17.100;

(2) Such mental health services, consultation, professional counseling, and training for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of a veteran or dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of title 38, United States Code; (38 U.S.C. 601(5)); and

(3)(i) Medical services rendered in the course of the hospitalization of a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of title 38, United States Code, and (ii) transportation and incidental expenses for such dependent or survivor of a veteran who is in need of treatment for any injury, disease, or disability and is unable to defray the expense of transportation. (38 U.S.C. 601(5))

(m) *Medical services.* The term "medical services" includes, in addition to medical examination, treatment, and rehabilitative services:

(1) Surgical services, dental services and appliances as authorized in §§ 17.60(f), 17.120, 17.123 and 17.123a, optometric and podiatric services, and except for veterans authorized outpatient care under § 17.60(e), wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as are medically determined to be reasonable and necessary;

(2) Such consultation, professional counseling, training and mental health services as are necessary in connection with the treatment—

(i) Of the service-connected disability of a veteran pursuant to § 17.60(a) and (b);

(ii) Of the nonservice-connected disability of a veteran where such services were initiated during the veteran's hospitalization and the provision of such services is essential to permit the release of the veteran from inpatient care;

for the members of the immediate family or legal guardian of the veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of the veteran or dependent or survivor of a veteran receiving care under § 17.54(c). For the purposes of this paragraph, a dependent or survivor of a veteran receiving care under § 17.54(c) shall be eligible for the same medical services as a veteran; and

(3) Transportation and incidental expenses for any person entitled to such benefits under the provisions of § 17.100. (38 U.S.C. 601(6))

(n) *Domiciliary care.* The term "domiciliary care" means the furnishing of a home to a veteran, embracing the furnishing of shelter, food, clothing and other comforts of home, including necessary medical services. The term further includes travel and incidental expenses pursuant to § 17.100.

(o) *Service-connected disability.* The term "service-connected disability" means a disability incurred or aggravated in line of duty in the active military, naval, or air service. See § 17.33 referable to presumptive service connection for psychosis. For purposes of out-patient treatment and on submission of an appropriate application therefor, all disabilities of Spanish-American War veterans may be considered war service connected.

(p) *Nursing home care.* The term "nursing home care" means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require skilled nursing or intermediate care and related medical services, if such care and services are prescribed by, or are performed under the general direction of, persons duly licensed to provide such care. The term includes intensive care where the nursing service is under the supervision of a registered professional nurse. (38 U.S.C. 101(28), 620(e))

(q) *Research center.* The term "research center" means an institution (or part of an institution) the primary function of which is research, training of specialists and demonstrations and which, in connection therewith, provides specialized, high quality diagnostic and treatment services for inpatients and outpatients.

(r) *Specialized medical resources.* The term "specialized medical resources" means medical resources (whether equipment, space or personnel) which, because of cost, limited availability, or unusual nature, are either unique in the medical community or are subject to maximum utilization only through mutual use.

(s) *Commonwealth Army veteran.* The term "Commonwealth Army veteran" means any person who served before July 1, 1946, in the organized military forces of the Government of the Philippines, while such forces were in the service of the Armed Forces of the United States, pursuant to the military order of the President of the United States dated July 26, 1941, including among such military forces organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander-in-Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and who was discharged or released from such service under conditions other than dishonorable.

(t) *New Philippine Scout.* The term "new Philippine Scout" means any person who served in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945, and who was discharged or released from such service under conditions other than dishonorable.

(u) *State home.* The term "State home" means a home established by a State (other than a possession) for veterans disabled by age, disease, or otherwise who by reason of such disability are incapable of earning a living. The term also includes a home which furnishes nursing home care for such veterans.

(v) *Rehabilitative services.* The term "rehabilitative services" means such professional counseling, and guidance services and treatment programs (other than those types of vocational rehabilitation services for the purpose of restoring employability) as are necessary to restore to the maximum extent possible the physical, mental, and psychological functioning of an ill or disabled person. (38 U.S.C. 601(8))

(w) *Veterans Administration facilities.* The term "Veterans Administration facilities" means:

(1) Facilities over which the Administrator has direct jurisdiction;

(2) Government facilities for which the Administrator contracts; and

(3) Private facilities for which the Administrator contracts when Government facilities are not capable of furnishing economical care because of geographical inaccessibility or of furnishing the care or services required in order to provide:

(i) Hospital care or medical services to a veteran for the treatment of a service-connected disability or a disability for which a veteran was discharged or released from the active military, naval, or air service, or

(ii) Medical services for veterans released from inpatient care to outpatient treatment status or to any veteran who has a service-connected disability rated at 50 percent or more, or

(iii) Hospital care or medical services for the treatment of medical emergencies which pose a serious threat to the life or health of a veteran receiving hospital care in a facility for which the Administrator has direct jurisdiction or a government facility for which the Administrator contracts,

(iv) Hospital care for women veterans, or

(v) Hospital care for veterans in a State, territory, Commonwealth, or possession of the United States not contiguous to the 48 contiguous states. (38 U.S.C. 601(4))

[23 FR 6498, Aug. 22, 1958, as amended at 24 FR 8326, Oct. 14, 1959; 30 FR 1787, Feb. 9, 1965; 32 FR 6841, Mar. 4, 1967; 32 FR 13813, Oct. 4, 1967; 33 FR 5298, Apr. 3, 1968; 33 FR 19009, Dec. 20, 1968; 34 FR 9339, June 13, 1969; 36 FR 4782, Mar. 12, 1971; 45 FR 6934, Jan. 31, 1980]

§ 17.31 Duty periods defined.

Definitions of duty periods applicable to eligibility for medical benefits are as follows:

(a) *Active military, naval, or air service.* The term "active military, naval, or air service" includes active duty, any period of active duty for training during which the individual concerned was disabled from a disease or injury incurred or aggravated in

line of duty, and any period of inactive duty training during which the individual concerned was disabled from an injury incurred or aggravated in line of duty.

(b) *Active duty.* The term "active duty" means

(1) Full-time duty in the Armed Forces, other than active duty for training;

(2) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits";

(3) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (*a*) while on transfer to one of the Armed Forces, or (*b*) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (*c*) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter. (38 U.S.C. 101(21)(C))

(4) Service as a cadet at the U.S. Military, Air Force, or Coast Guard Academy, or as midshipman at the U.S. Naval Academy;

(5) Full-time duty as a member of the Women's Army Auxiliary Corps, Women's Reserve of the Navy and Marine Corps and Women's Reserve of the Coast Guard;

(6) Authorized travel to or from such duty or service;

(7) Service of any person as a member of the Women's Air Forces Service Pilots, or the service of any person in any similarly situated group the members of which rendered service to the Armed Forces of the United States in a capacity considered civilian employment or contractual service at the time such service was rendered, when the Secretary of Defense has:

(i) Determined that the service of such group constitutes active military service, and

(ii) Issued such person who is a member of such group a discharge from such service under honorable conditions. (Pub. L. 95-202, 91 Stat. 1433)

(c) *Active duty for training.* The term "active duty for training" means:

(1) Full-time duty in the Armed Forces performed by Reserves for training purposes;

(2) Full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service during the period covered in paragraph (b)(2) of this section;

(3) In the case of members of the National Guard or Air National Guard of any State, full-time duty under section 316, 502, 503, 504, or 505 of title 32, United States Code, or the prior corresponding provisions of law; and

(4) Authorized travel to or from such duty.

(5) Active duty for training does not include duty performed as a temporary member of the Coast Guard Reserve.

(d) *Inactive duty training.* The term "inactive duty training" means:

(1) Duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206, title 37, United States Code, or any other provision of law;

(2) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

(3) Duty (other than full-time duty) for members of the National Guard or Air National Guard of any State under the provisions of law stated in paragraph (c)(3) of this section.

(4) Inactive duty for training does not include work or study performed in connection with correspondence courses, or attendance at an educational institution in an inactive status, or duty performed as a temporary member of the Coast Guard Reserve.

[34 FR 9339, June 13, 1969, as amended at 45 FR 6934, Jan. 31, 1980; 45 FR 43169, June 26, 1980]

§ 17.32 Certain travel and time at acceptance center deemed active duty.

In any of the following circumstances, an applicant will be deemed to have active service:

(a) *When reporting for acceptance.* Any person who has either (1) applied for enlistment or enrollment in the active military, naval, or air service and has been provisionally accepted and directed or ordered to report to a place for final acceptance in such service, or (2) who has been selected or drafted for service in the Armed Forces and has reported pursuant to the call of his or her local draft board and before rejection; or (3) who has been called into the Federal service as a member of the National Guard, but has not been enrolled for the Federal service; and who has suffered an injury or contracted a disease in line of duty while en route to or from, or at, a place for final acceptance or entry upon active duty, will, for purposes of determining service connection for disability, be considered to have been on active duty and to have incurred such disability in the active military, naval, or air service.

(b) *When reporting for or returning from active duty or inactive duty training.* Any person who when authorized or required by competent authority, assumes an obligation to perform active duty for training or inactive duty training and is disabled from an injury incurred while proceeding directly to or returning directly from such active duty for training or inactive duty training shall be deemed to have been on active duty for training or inactive duty training as the case may be, at the time such injury was incurred.

(c) *When returning home from active duty.* Whenever a person is discharged or released from a period of active duty he or she shall be deemed to continue on active duty during the period of time immediately following the date of such discharge or release from such duty determined by the Secretary concerned to be required in order to proceed to his or her home by the most direct route, and in any event, until midnight of the date of such discharge or release.

[34 FR 9340, June 13, 1969, as amended at 45 FR 6935, Jan. 31, 1980]

Presumption Relating to Psychosis

§ 17.33 Presumption relating to psychosis.

For the purpose of any provision of any section in this Part 17, specifying service-connected disability as a prerequisite for authorizing any medical service or benefit, any veteran of World War II, the Korean conflict, or Vietnam era who developed an active psychosis (a) within 2 years after his or her discharge or release from the active military, naval or air service, and (b) before July 26, 1949, in the case of a veteran of World War II, or February 1, 1957, in the case of a veteran of the Korean conflict, or before the expiration of 2 years following termination of the Vietnam era in the case of a Vietnam era veteran, shall be deemed to have incurred such disability in the active military, naval or air service.

[32 FR 13813, Oct. 4, 1967, as amended at 45 FR 6935, Jan. 31, 1980]

Protection of Patient Rights

§ 17.34 Informed consent.

(a) For the purpose of this section the term:

(1) "Informed consent" means the knowing grant of permission by an individual or the individual's legally authorized representative, which is freely given without any element of fraud, duress, deceit, or other form of coercion to the administration or performance of a proposed diagnostic or therapeutic procedure or course of treatment.

(2) "Legally authorized representative" means an individual, organization, or other judicially recognized body empowered under the applicable State law to act on behalf of a legally incompetent individual.

(b) Each informed consent shall include documentation of the following:

(1) The name of the individual.

(2) The date the consent is obtained.

(3) The name(s) of the individual(s) immediately responsible for the performance of the procedure or administration of the treatment.

(4) The procedure to be performed or the treatment to be administered, explained in language which is understandable to the average lay person.

(5) Evidence that reasonable and available alternatives to the proposed treatment or procedure, together with recognized risks of the treatment or procedure and alternatives, were discussed with the individual in language understandable to the average lay person.

(6) An offer to answer inquiries concerning the procedure or treatment.

(7) A clear indication that the individual or the individual's legally authorized representative may withdraw consent at any time without prejudice to the individual.

(8) An authorization for the disposition of any tissue, organ, or body parts.

(9) The signatures of the individual or the individual's legally authorized representative and the person who obtained the consent.

(c) If a proposed course of treatment or procedure involves approved medical research in whole or in part, the individual shall be advised of this. Informed consent shall be obtained specifically for the administration or performance of that aspect of the treatment or procedure which is identified as involving such research. This consent shall be in addition to the consent to be obtained for the administration or performance of the nonresearch aspect of the treatment or procedure and it shall contain the various elements set forth in paragraph (b) of this section.

(d) The Chief Medical Director will establish an appropriate method for the periodic review of patients' consents in order to insure compliance with this section and other regulations and to maintain the protection of the patients' rights. (38 U.S.C. 4131)

[45 FR 6935, Jan. 31, 1980]

Tentative Eligibility Determinations

§ 17.35 Tentative eligibility determinations.

When an application for hospital care or other medical services, except outpatient dental care, has been filed which requires an adjudication as to service connection or a determination as to any other eligibility prerequisite which cannot immediately be established, the service (including transportation) may be authorized without further delay if it is determined that eligibility for care probably will be established. Tentative eligibility determinations under this section, however, will only be made if:

(a) *In emergencies.* The applicant needs hospital care or other medical services in emergency circumstances, or

(b) *For persons recently discharged from service.* The application was filed within 6 months after date of honorable discharge from a period of not less than 6 months of active duty.

[35 FR 6586, Apr. 24, 1970]

Hospital or Nursing Home Care and Medical Services in Foreign Countries

§ 17.36 Hospital care and medical services in foreign countries other than the Philippines.

No person shall be entitled to receive hospital or domiciliary care or medical services in a foreign country other than the Republic of the Philippines, except as provided in paragraphs (a) and (b) of this section:

(a) Hospital care or medical services for otherwise eligible veterans who are citizens of the United States sojourning or residing abroad and in need of treatment for an adjudicated service-connected disability, or non-service-connected disability associated with and held to be aggravating a service-connected disability.

(b) Hospital care or medical services for a veteran who has been found in need of vocational rehabilitation, and for whom an objective has been selected, or who is pursuing a course of vocational rehabilitation training, and

who is medically determined to be in need of care or treatment for any of the following reasons:

(1) To make possible his or her entrance into a course of training; or

(2) To prevent interruption of a course of training; or

(3) To hasten the return to a course of training when a veteran in interrupted or leave status, when cessation of instruction has become necessary because of illness, injury, or dental condition. (38 U.S.C. 624).

[45 FR 80529, Dec. 5, 1980]

§ 17.37 Hospital or nursing home care in the Philippines in facilities other than Veterans Memorial Medical Center.

Hospital or nursing home care may be authorized in the Republic of the Philippines in facilities other than the Veterans Memorial Medical Center for any veteran, if:

(a) *For United States veterans.* The veteran is a United States veteran and is eligible for hospital or nursing home care under § 17.47 (a) or (b), or a veteran who has been found in need of vocational rehabilitation, and for whom an objective has been selected, or who is pursuing a course of vocational rehabilitation training, and hospital care has been determined necessary for any of the reasons enumerated in § 17.36(b), or

(b) *For Commonwealth Army veterans or new Philippine Scouts.* The veteran is a Commonwealth Army veteran or a new Philippine Scout in need of hospital or nursing home care for service-connected disability or non-service-connected disability associated with and held to be aggravating a service-connected disability and: (1) Facilities in the Veterans Memorial Medical Center are being used to the maximum extent feasible in hospitalizing such veterans, or (2) he is suffering from leprosy, or (3) use of the facility is required in emergency circumstances.

[39 FR 1840, Jan. 15, 1974, as amended at 45 FR 6935, Jan. 31, 1980; 45 FR 80529, Dec. 5, 1980]

§ 17.38 Hospital or nursing home care at Veterans Memorial Medical Center, Philippines.

Hospital or nursing home care at the Veterans Memorial Medical Center, Quezon City, Republic of the Philippines, may be authorized by the United States Veterans Administration pursuant to the terms and conditions set forth in §§ 17.350 through 17.370, for the following persons:

(a) *For Commonwealth Army veterans.* Care at the Veterans Memorial Medical Center may be authorized for any Commonwealth Army veteran, if:

(1) The veteran is in need of care for a service-connected disability or non-service-connected disability associated with and held to be aggravating a service-connected disability, or

(2) The veteran is in need of care for a non-service-connected disability and is unable to defray the expenses of such care and so states under oath, or

(b) *For new Philippine Scouts.* Care at the Veterans Memorial Medical Center may be authorized for any person who served as a new Philippine Scout, if:

(1) He or she is in need of care for a service-connected disability or non-service-connected disability associated with and held to be aggravating a service-connected disability, or

(2) He or she enlisted before July 4, 1946, is in need of care for non-service-connected disability, and is unable to defray the expenses of such care and so states under oath.

(c) *For United States veterans.* (1) Care at the Veterans Memorial Medical Center may be authorized for any service-connected disability of a veteran of service in the Armed Forces of the United States (including veterans of service in the Philippine Scouts under laws in effect prior to the enactment of section 14 of the Armed Forces Voluntary Recruitment Act of 1945), who is eligible for hospital care under § 17.47 (a) or (b).

(2) Care at the Veterans Memorial Medical Center may be authorized for a veteran for a nonservice-connected disability if such veteran is unable to defray the expenses of necessary hospital care and so states under oath. (38 U.S.C. 624(c)).

(d) *Transfers for nursing home care.* Transfer of any veteran hospitalized in the Philippines at Veterans Administration expense to a nursing home facility may be authorized subject to the following:

(1) The nursing home care facility is determined to meet the physical and professional standards prescribed by the Chief Medical Director, and

(2) The cost of the nursing home care in such institution does not exceed 50 per centum of the Veterans Memorial Medical Center per diem rate jointly determined for each fiscal year by the two governments to be fair and reasonable.

(3) The nursing home care will not be for more than 6 months in the aggregate in connection with any one transfer, except in the case of a veteran whose hospitalization was primarily for a service-connected disability. In such case entitlement to nursing home care under this subparagraph is not subject to any limitation.

(e) *Extensions of community nursing home care beyond 6 months.* The Chief Medical Director or designee may authorize, for any veteran whose hospitalization was not primarily for a service-connected disability, an extension of nursing care in a contract nursing care facility at Veterans Administration expense beyond 6 months for circumstances of an unusual nature such as when a medical and economic need continues to exist, additional time is required to complete other arrangements for care or when readmission to a hospital is not deemed professionally advisable despite terminal deterioration of the veteran's medical condition.

[33 FR 5299, Apr. 3, 1968, as amended at 39 FR 1840, Jan. 15, 1974; 45 FR 6935, Jan. 31, 1980; 45 FR 47679, July 16, 1980; 45 FR 80530, Dec. 5, 1980]

§ 17.39 Outpatient care in the Philippines for United States veterans.

Outpatient care in the Republic of the Philippines may be authorized for any United States veteran eligible for such care under § 17.60(a), (b), (c), or (d). Care may also be provided for those conditions adjunct to or held to be aggravating a service-connected disease or disability. (38 U.S.C. 624).

[45 FR 47679, July 16, 1980]

§ 17.40 Outpatient care for Commonwealth Army veterans and new Philippine Scout veterans.

Outpatient care may be authorized in Veterans Administration facilities by contract or agreement between the two governments for any Commonwealth Army veteran or new Philippine Scout veteran for the treatment of a service-connected disability, or for a non-service-connected disability associated with and held to be aggravating a service-connected disability.

[39 FR 1841, Jan. 15, 1974]

§ 17.41 Transportation for Commonwealth Army and new Philippine Scout veterans.

Transportation may be furnished for any Commonwealth Army veteran or new Philippine Scout veteran eligible for treatment at the Veterans Memorial Hospital, or Veterans Administration Regional Office, Manila, if authorized in advance by the U.S. Veterans Administration except as provided in § 17.43.

[35 FR 11392, July 16, 1970]

§ 17.42 Additional services for indigents.

In addition to the usual medical services agreed upon between the governments of the United States and the Republic of the Philippines to be made available to patients for whom the Veterans Administration has authorized care at the Veterans Memorial Hospital, any such patient determined by the U.S. Veterans Administration to be indigent or without funds may be furnished toilet articles and barber services, including haircutting and shaving necessary for hygienic reasons.

[33 FR 5299, Apr. 3, 1968]

§ 17.43 Approval of unauthorized travel of claimants and beneficiaries in the Republic of the Philippines.

(a) Payment may be approved for travel performed under § 17.41 without prior authorization only in those cases where the Veterans Administration determines that there was a need for

prompt medical care which was approved and:

(1) The circumstances prevented a request for prior travel authorization, or

(2) Due to Veterans Administration delay or error prior authorization for travel was not given, or

(3) There was a justifiable lack of knowledge on the part of a third party acting for the veteran that a request for prior authorization was necessary.

(b) In other cases, payment may be approved for such travel without prior authorization only upon a finding by the Administrator or designee that failure to secure prior authorization was justified.

[35 FR 11392, July 16, 1970, as amended at 45 FR 47679, July 16, 1980]

EXAMINATIONS AND OBSERVATION AND EXAMINATION

§ 17.45 Persons entitled to hospital observation and physical examination.

Hospitalization for observation and physical (including mental) examination may be effected when requested by an authorized official, or when found necessary in examination of the following persons:

(a) Claimants or beneficiaries of the Veterans Administration for purposes of disability compensation, pension, medical feasibility for vocational training and Government insurance.

(b) Claimants or beneficiaries referred to a diagnostic center for study to determine the clinical identity of an obscure disorder.

(c) Employees of the Veterans' Administration when necessary to determine their mental or physical fitness to perform official duties.

(d) Claimants or beneficiaries of other Federal agencies:

(1) Department of Justice—plaintiffs in Government insurance suits.

(2) United States Civil Service Commission—annuitants or applicants for retirement annuity, and such examinations of prospective appointees as may be requested.

(3) Office of Workers' Compensation Programs—to determine identity, severity, or persistence of disability.

(4) Railroad Retirement Board—applicants for annuity under Public No. 162, 75th Congress.

(5) Other Federal agencies.

(e) Pensioners of nations allied with the United States in World War I and World War II, upon authorization from accredited officials of the respective governments.

[13 FR 7156, Nov. 27, 1948, as amended at 16 FR 12091, Nov. 30, 1951; 19 FR 6716, Oct. 19, 1954; 32 FR 13813, Oct. 4, 1967; 39 FR 32606, Sept. 10, 1974]

§ 17.45a Examinations on an outpatient basis.

Physical examinations on an outpatient basis may be furnished to applicants who have been tentatively determined to be eligible for Veterans Administration hospital or domiciliary care to determine their need for such care and to the same categories of persons for whom hospitalization for observation and examination may be authorized under § 17.45.

[35 FR 6586, Apr. 24, 1970]

HOSPITAL, DOMICILIARY AND NURSING HOME CARE

§ 17.46 Persons entitled to hospital or domiciliary care.

Hospital or domiciliary care may be provided:

(a) Subject to the provisions of §§ 17.46b through 17.48, for persons eligible as veterans or on the basis of service in the uniformed services.

(b) Not subject to the eligibility provisions of §§ 17.46b through 17.48, for:

(1) Persons in the Armed Forces when duly referred with authorization therefor, may be furnished hospital care. Emergency treatment may be rendered, without obtaining formal authorization, to such persons upon their own application, when absent from their commands. Identification of active duty members of the uniformed services will be made by military identification card.

(2) Hospital care may be provided, upon authorization, for beneficiaries of the Public Health Service, Office of Workers' Compensation Programs, and other Federal agencies.

(3) Pensioners of nations allied with the United States in World War I and World War II may be supplied hospital care when duly authorized.

(c) Emergency hospital care may be provided for: (1) Persons having no eligibility, as a humanitarian service.

(2) Persons admitted because of presumed discharge or retirement from the Armed Forces, but subsequently found to be ineligible as such.

(3) Employees (not potentially eligible as ex-members of the Armed Forces) and members of their families, when residing on reservations of field stations of the Veterans Administration, and when they cannot feasibly obtain emergency treatment from private facilities.

(d) Hospital care when incidental to, and to the extent necessary for, the use of a specialized Veterans Administration medical resource pursuant to a sharing agreement entered into under § 17.210, may be authorized for any person designated by the other party to the agreement as a patient to be benefited under the agreement.

(e) The authorization of services under any provision of this section, except services for eligible veterans, is subject to charges as required by § 17.62.

[23 FR 6498, Aug. 22, 1958, as amended at 24 FR 8327, Oct. 14, 1959; 32 FR 6841, May 4, 1967; 34 FR 9340, June 13, 1969; 35 FR 6586, Apr. 24, 1970; 39 FR 32606, Sept. 10, 1974]

§ 17.46a [Reserved]

§ 17.46b Hospital care for certain retirees with chronic disability (Executive Orders 10122, 10400 and 11733).

Hospital care may be furnished when beds are available to members or former members of the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, now National Oceanic and Atmospheric Administration hereinafter referred to as "NOAA", and Public Health Service) temporarily or permanently retired for physical disability or receiving disability retirement pay who require hospital care for chronic diseases and who have no eligibility for hospital care under laws governing the Veterans Administration, or who having eligibility do not elect hospitalization as Veterans Administration beneficiaries. Care under this section is subject to the following conditions:

(a) Persons defined in this section who are members or former members of the active military, naval, or air service must agree to pay the subsistence rate set by the Administrator of Veterans Affairs, except that no subsistence charge will be made for those persons who are members or former members of the Public Health Service, Coast Guard, Coast and Geodetic Survey now "NOAA", and enlisted personnel of the Army, Navy, Marine Corps, and Air Force.

(b) Under this section, the term "chronic diseases" shall include chronic arthritis, malignancy, psychiatric disorders, poliomyelitis with residuals, neurological disabilities, diseases of the nervous system, severe injuries to the nervous system, including quadriplegia, hemiplegia and paraplegia, tuberculosis, blindness and deafness requiring definitive rehabilitation, disability from major amputation, and other diseases as may be agreed upon from time to time by the Chief Medical Director and designated officials of the Department of Defense and Department of Health, Education, and Welfare. For the purpose of this section, blindness is defined as corrected visual acuity of 20/200 or less in the better eye, or corrected central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that its widest diameter subtends the widest diameter of the field of the better eye at an angle no greater than 20°.

(c) In the case of persons who are former members of the Coast and Geodetic Survey, care may be furnished under this section even though their retirement for disability was from the Environmental Science Services Administration or NOAA.

[34 FR 9340, June 13, 1969, as amended at 39 FR 1841, Jan. 15, 1974]

§ 17.46c Hospital care for research purposes.

Subject to the provisions of § 17.62(g), any person who is a bona

fide volunteer may be admitted to a Veterans Administration hospital when the treatment to be rendered is part of an approved Veterans Administration research project and there are insufficient veteran-patients suitable for the project.

[35 FR 11470, July 17, 1970]

§ 17.47 Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service.

Within the limits of Veterans Administration facilities, hospital, domiciliary, or nursing home care may be furnished the following applicants.

(a) Hospital or nursing home care for veterans in need of such care for an adjudicated service-connected disability or for a non-service-connected condition which is associated with and held to be aggravating such disability (see § 17.33 with respect to presumption relating to psychosis).

(b) Hospital or nursing home care:

(1) Hospital or nursing home care for veterans discharged or released for disability incurred or aggravated in line of duty when in need of hospital or nursing home care for the disability for which discharged or released, or for a non-service-connected condition which is associated with and held to be aggravating such disability.

(2) Hospital care for persons defined in § 17.46b who require hospitalization for chronic diseases incurred in line of duty.

(c) Hospital, nursing home or domiciliary care:

(1) Hospital or nursing home care for veterans discharged or released for disability incurred or aggravated in line of duty, or persons in receipt of or but for the receipt of retirement pay would be entitled to disability compensation for a service-connected disability, when suffering from non-service-connected disabilities requiring hospital care.

(2) Hospital care for persons defined in § 17.46b who require hospital care for chronic diseases not incurred in line of duty.

(3) Domiciliary care for veterans discharged or released for disability incurred or aggravated in line of duty, or persons in receipt of compensation for service connected disability, when suffering from a permanent disability or tuberculosis or neuropsychiatric ailment and who are incapacitated from earning a living and who have no adequate means of support. An additional requirement for eligibility for domiciliary care is the ability of the veteran to perform all the following:

(i) Perform without assistance daily ablutions, such as brushing teeth; bathing; combing hair; body eliminations.

(ii) Dress himself, with a minimum of assistance.

(iii) Proceed to and return from the dining hall without aid.

(iv) Feed himself.

(v) Secure medical attention on an ambulatory basis or by use of personally propelled wheelchair.

(vi) Have voluntary control over body eliminations or control by use of an appropriate prosthesis.

(vii) Share in some measure, however slight, in the maintenance and operation of the facility.

(viii) Make rational and competent decisions as to his or her desires to remain or leave the facility.

(d)(1) Hospital care for veterans suffering from a nonservice-connected disability, disease or defect which, being susceptible to cure or decided improvement, indicates need for hospital care, providing the veterans (except those in receipt of pension) swear they are unable to defray the expense of hospital care. (38 U.S.C. 610(a), 622).

(2) Nursing home care for veterans requiring such care for nonservice-connected conditions, providing the veterans (except those in receipt of pension) swear they are unable to defray the expense of nursing home care. (38 U.S.C. 610(a), 622).

(3) Domiciliary care for veterans suffering from a disability, disease or defect which, being essentially chronic in type, is producing disablement of such degree and of such probable persistency as will incapacitate the veteran from earning a living for a prospective period, and thereby indicates need for domiciliary care. The additional requirements for eligibility for domiciliary care enumerated in paragraph (c)(3) of this section are also applica-

ble to these veterans applying for domiciliary care. (38 U.S.C. 610(b), 621).

(e) Hospital or nursing home care for any veteran for a nonservice-connected disability if such veteran is 65 years of age or older.

[24 FR 8328, Oct. 4, 1959, as amended at 30 FR 1787, Feb. 9, 1965; 32 FR 13813, Oct. 4, 1967; 34 FR 9340, June 13, 1969; 39 FR 1841, Jan. 15, 1974; 45 FR 6935, Jan. 31, 1980]

§ 17.48 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

(a)(1) For applicants discharged or released for disability incurred or aggravated in line of duty and who are not in receipt of compensation for service-connected or service-aggravated disability, the official records of the Armed Forces relative to findings of line of duty for its purposes will be accepted in determining eligibility for hospital care. Where the official records of the Armed Forces show a finding of disability not incurred or aggravated in line of duty and evidence is submitted to the Veterans Administration which permits of a different finding, the decision of the Armed Forces will not be binding upon the Veterans Administration, which will be free to make its own determination of line of duty incurrence or aggravation upon evidence so submitted. It will be incumbent upon the applicant to present controverting evidence and, until such evidence is presented and a determination favorable to the applicant is made by the Veterans Administration, the finding of the Armed Forces will control and hospital care will not be authorized. Such controverting evidence, when received from an applicant, will be referred to the adjudicating agency which would have jurisdiction if the applicant was filing claim for pension or disability compensation, and the determination of such agency as to line of duty, which is promptly to be communicated to the head of the field facility receiving the application for hospital care, will govern the facility Director's disapproval or approval of admission, other eligibility requirements having been met. Where the official records of the Armed Forces show that the disability for which a veteran was discharged or released from the Armed Forces under other than dishonorable conditions was incurred or aggravated in the line of duty, such showing will be accepted for the purpose of determining his or her eligibility for hospitalization, notwithstanding the fact that the Veterans Administration has made a determination in connection with a claim for monetary benefits that the disability was incurred or aggravated not in line of duty.

(2) In those exceptional cases where the official records of the Armed Forces show discharge or release under other than dishonorable conditions because of expiration of period of enlistment or any other reason except disability, but also show a disability incurred or aggravated in line of duty during the said enlistment; and the disability so recorded is considered in medical judgment to be or to have been of such character, duration, and degree as to have justified a discharge or release for disability had the period of enlistment not expired or other reason for discharge or release been given, the Chief Medical Director, upon consideration of a clear, full statement of circumstances, is authorized to approve admission of the applicant for hospital care, provided other eligibility requirements are met. A typical case of this kind will be one where the applicant was under treatment for the said disability recorded during his or her service at the time discharge or release was given for the reason other than disability.

(b) Under paragraph (c)(3) of § 17.47: "No adequate means of support"—when a applicant is receiving an income of $415 or more per month from any source for personal use, this fact will be considered prima facie evidence of adequate means of support. This is subject to rebuttal by a showing that such income is not adequate to provide the care required by reason of the veteran's disability or that the income is not available for the veteran's use because of other obligations such as contributions in whole or in part to the support of a spouse, child, mother, or father. In all such cases of alleged inadequate means of support,

the circumstances will be submitted to the Director for decision.

(c) Under paragraph (d) of § 17.47:

(1) "A disability, disease, or defect" will comprehend any acute, subacute, or chronic disease (of a general medical, tuberculous, or neuropsychiatric type) or any acute, subacute, or chronic surgical condition susceptible of cure or decided improvement by hospital care; or any condition which does not require hospital care for an acute or chronic condition but requires domiciliary care. Domiciliary care, as the term implies, is the provision of a home, with such ambulant medical care as is needed. To be entitled to domiciliary care, the applicant must consistently have a disability, disease, or injury which is essentially chronic in type and is producing disablement of such degree and probable persistency as will incapacitate from earning a living for a prospective period.

(2) "Unable to defray the expense of hospital, nursing home or domiciliary care"—the affidavit of the applicant on VA Form 10-10 that he or she is unable to defray the expenses of hospital, nursing home or domiciliary care will constitute sufficient warrant to furnish such care.

(d) Persons hospitalized pursuant to paragraph (c)(1), (d) or (e) of § 17.47, who it is believed may be entitled to hospital care or medical or surgical treatment or to reimbursement for all or part of the cost thereof by reason of any one or more of the following:

(1) (i) Membership in a union, fraternal or other organization; (ii) rights under a group hospitalization plan, or under any of the prepay medical care or insurance contracts or plans which provide for payment or reimbursement in whole or in part, for the cost of medical or hospital care, and conditions the obligation of the insurer to pay upon payment or incurrence of liability by the person covered; (iii) "Workmen's Compensation" or "employer's liability" statutes, State or Federal; and (iv) right to maintenance and cure in admiralty; or

(2) By reason of statutory or other relationships with third parties, including those liable for damages because of negligence or other legal wrong;

Will not be furnished hospital care, medical or surgical treatment, without charge therefor to the extent of the amount for which such parties, referred to in paragraph (d)(1) or (2) of this section, are, or will become liable. Such patients will be requested to execute an appropriate assignment as prescribed in this paragraph. Patients who, it is believed, may be entitled to care under any one of the plans in paragraph (d)(1) of this section, will be requested to execute VA Form 10-2381, Power of Attorney and Agreement. Those patients who, it is believed, may be entitled to hospital care under the circumstances prescribed in paragraph (d)(2) of this section will be requested to complete VA Form 2-4763, Power of Attorney and Assignment. Notice of this assignment will be mailed promptly to the party or parties believed to be liable. When the amount of charges is ascertained, bill therefor will be mailed such party or parties.

(e) Women veterans will not be entitled to hospital care for pregnancy and parturition unless it is complicated by a pathological condition.

(f) Within the limits of Veterans Administration facilities, any veteran who is receiving hospital or nursing home care in a hospital under the direct jurisdiction of the Veterans Administration, or hospital care in a Federal hospital under agreement, may be furnished medical services to correct or treat any non-service-connected disability of such veteran, in addition to treatment incident to the disability for which the veteran is hospitalized, if the veteran is willing, and such services are reasonably necessary to protect the health of such veteran.

[32 FR 13813, Oct. 4, 1967, as amended at 34 FR 9340, June 13, 1969; 35 FR 15924, Oct. 9, 1970; 35 FR 17947, Nov. 21, 1970; 39 FR 1841, Jan. 15, 1974; 39 FR 32606, Sept. 10, 1974; 45 FR 6936, Jan. 31, 1980; 45 FR 47680, July 16, 1980]

§ 17.49 Veterans Administration policy on priorities for hospital, nursing home and domiciliary care.

(a) *Priorities for hospital care.* Eligible persons will be admitted or transferred to a Veterans Administration hospital in the following order:

(1) *Emergency.* Applicants presenting a bona fide medical emergency (i.e., delay in immediate admission would result in the loss of life or do irreparable and serious damage to a part of the body) will be admitted immediately without regard to their entitlement under the priority groups set forth in paragraph (a)(3) of this section. Applicants for hospital care for a psychotic condition will not be accorded emergency priority if, without hazard, they can be transported to another hospital.

(2) *Patients on hospital rolls and not occupying a bed.* As these patients are carried on the rolls of the hospital for further treatment of the condition for which they were originally hospitalized, readmission will be effected for treatment of this condition when required without regard to their entitlement under the priority groups set forth in paragraph (a)(3) of this section.

(3) *Priority groups.* (i) Group I includes:

(*a*) Veterans requiring hospital treatment for service-connected or adjunct disabilities (§ 17.47 (a) or (b)) who are:

(*1*) Applicants not hospitalized by the Veterans Administration. (Are not in hospitals, or are in non-Veterans Administration hospitals but not under Veterans Administration authorization.)

(*2*) Patients currently hospitalized by Veterans Administration in Veterans Administration or non-Veterans Administration hospitals whose transfer has been requested for medical reasons.

(*b*) Armed Forces active duty personnel eligible for hospital treatment under § 17.46(b)(1) who are transferred in anticipation of retirement or separation from active service.

(*c*) A veteran who has been found in need of vocational rehabilitation, and for whom an objective has been selected, or who is pursuing a course of vocational rehabilitation training, and such care is medically determined necessary for any of the reasons enumerated in § 17.36(b).

(ii) Group II includes:

(*a*) Persons whose hospital care under § 17.45 for observation and examination purposes has been requested by authorized Veterans Administration officials.

(*b*) Male veterans eligible under § 17.47 (a) or (b), or female veterans eligible under § 17.47, who are hospitalized as beneficiaries of the Veterans Administration in non-Federal hospitals.

(iii) Group III includes:

(*a*) Veterans receiving hospital, nursing home or domiciliary care from Veterans Administration pursuant to § 17.47 (c), (d), or (e) as applicable, whose transfer to a Veterans Administration hospital has been requested for medical reasons except as follows: Veterans eligible under § 17.47 (d) or (e), admitted to general medical and surgical hospitals who subsequently are determined to require psychiatric care for more than 6 months will not be accorded priority for transfer under this group. (See group V.)

(*b*) Patients eligible under § 17.47 (a) or (b) who are in Veterans Administration hospitals which are not the nearest appropriate facility to the point of application, may be transferred to the appropriate hospital nearest the point of application provided the clinical findings indicate they will require 90 days or more of inpatient care in the latter facility.

(*c*) Patients eligible under § 17.47(a) or (b) currently hospitalized in an appropriate Veterans Administration facility nearest the point of application who have requested a transfer at their own expense to an appropriate Veterans Administration facility nearer their home, provided clinical findings indicate that such patient will require hospital treatment for a period of 90 days or more in the latter facility.

(iv) Group IV includes veterans eligible under § 17.47(c), requiring hospital treatment for non-service connected disabilities, and who are not hospitalized by Veterans Administration. (Are not in hospitals or are in non-Veterans Administration hospitals but not under Veterans Administration authorization.)

(v) Group V includes:

(*a*) Veterans eligible under § 17.47(d) or (e) admitted to a Veterans Administration facility who subsequently are determined to require psychiatric care

for more than 6 months and transfer to another Veterans Administration facility for such care has been requested.

(*b*) Patients eligible under § 17.47(c), (d) or (e) who on application were admitted to a Veterans Administration facility other than the appropriate one nearest to the point of application. These veterans may be transferred to the appropriate facility which is nearest to the point of application provided the clinical findings indicate that they will require 90 days or more of inpatient care in the latter facility.

(*c*) Patients eligible under § 17.47(c), (d) or (e) currently hospitalized in an appropriate Veterans Administration facility nearest the point of application who have requested a transfer at their own expense to an appropriate Veterans Administration facility nearer their home, provided clinical findings indicate that such patients will require hospital care for a period of 90 days or more in the latter facility.

(vi) Group VI includes veterans eligible under § 17.47(d) or (e) not hospitalized by the Veterans Administration (are not in hospitals or are in non-Veterans Administration hospitals but not under Veterans Administration authorization).

(vii) Group VII includes persons eligible under § 17.54 requiring hospital care.

(viii) Group VIII includes persons eligible under § 17.46 (b), (c), or (d) (active duty or retired military personnel, beneficiaries from other Federal agencies, veterans of nations allied with the United States in World War I or II, persons treated under sharing agreements, etc.).

(ix) Group IX includes patients in Veterans Administration facilities who have requested transfer, at their own expense for personal reasons, to another appropriate Veterans Administration facility which is not nearest their home, provided the clinical findings indicate that such patients will require hospital care for a period of 6 months or more in the latter facility.

(x) Group X includes veterans eligible under § 17.47(d) or (e) requiring hospital care: (*a*) for an occupational injury or disease incurred in or as a result of their employment who are entitled to necessary medical and hospital treatment elsewhere at no expense to themselves by means of some form of industrial coverage provided by their employer or under a worker's compensation statute or law or (*b*) who are entitled to necessary medical and hospital treatment elsewhere at no expense to themselves by reason of some other form of insurance. An applicant will be classified in paragraph (a)(3)(x)(*a*) or (*b*) of this section only when an employer or insurer has admitted liability and advised the Veterans Administration in writing that the veteran is eligible for the necessary medical and hospital care at no expense to himself/herself. If such information is not available, the application will be placed in group VI and no action will be taken to ascertain liability prior to admission of the veteran.

(4) *Order of consideration within priority groups.* (i) All applications within a priority group will be listed in an "Urgent" or "General" category, depending upon the examining physician's decision with respect to medical need for hospital care in each case.

(ii) When a suitable bed is vacant and not needed for an emergency admission, the following rule will apply. The bed will be offered to the person for whom it is suitable who is listed first in the highest priority group. No person in any priority group, whether in the urgent or general category, will be offered the bed if there are one or more persons for whom it is suitable who are in the urgent or general category of the higher priority group.

(iii) The principle stated in paragraphs (a)(4) (i) and (ii) of this section will also be followed in utilizing allocated beds in non-Veterans Administration hospitals.

(b) *Priorities for domiciliary care.* Each person who applies and qualifies for domiciliary care will be classified in one of the applicable priority groups listed in this paragraph.

(1) Domiciliary members returning from an episode of hospital care or those returning from furlough are not to be considered as applicants. Such members are carried on the rolls of the domiciliary and their readmission

will be effected without regard to their classification under the priority groupings listed in paragraph (b)(2) of this section.

(2) Priority for admission to domiciliary care (except as noted in paragraph (b)(1) of this section).

(i) Group I includes eligible patients under § 17.47(c)(3), who are not absent sick in hospital from domicile status, awaiting admission from Veterans Administration medical facilities.

(ii) Group II includes applicants eligible under § 17.47(c)(3).

(iii) Group III includes patients eligible under § 17.47(d) who are not absent sick in hospital from domicile status, awaiting admission from Veterans Administration medical facilities.

(iv) Group IV includes applicants eligible under § 17.47(d) who are in receipt of less than $415 income a month for their own use.

(v) Group V includes applicants eligible under § 17.47(d) who are in receipt of $415 or more income a month for their own use.

(vi) Group VI includes members awaiting transfer for personal reasons from other Veterans Administration domiciliaries and domiciliary sections of centers.

(c) *Priorities for nursing home care.* Priorities for nursing home care will follow the same sequence as that provided in paragraph (a) of this section for hospital care, except in the case of nursing home care for a service-connected disability, priority will be given to veterans transferred from hospital care to Veterans Administration nursing home care over veterans directly admitted.

NOTE: The provisions of § 17.48(b)(1) will apply in determining whether the veteran has $415 income available for his or her own use.

[24 FR 8329, Oct. 14, 1959, as amended at 32 FR 6841, May 4, 1967; 33 FR 5299, Apr. 3, 1968; 35 FR 17947, Nov. 21, 1970; 36 FR 3117, Feb. 18, 1971; 39 FR 1842, Jan. 15, 1974; 39 FR 32606, Sept. 10, 1974; 45 FR 6936, Jan. 31, 1980; 45 FR 47680, July 16, 1980]

USE OF DEPARTMENT OF DEFENSE, PUBLIC HEALTH SERVICE OR OTHER FEDERAL HOSPITALS

§ 17.50 Use of Department of Defense, Public Health Service or other Federal hospitals with beds allocated to the Veterans Administration.

Hospital facilities operated by the Department of Defense or the Public Health Service (or any other agency of the United States Government) may be used for the care of Veterans Administration patients pursuant to agreements between the Veterans Administration and the department or agency operating the facility. When such an agreement has been entered into and a bed allocation for Veterans Administration patients has been provided for in a specific hospital covered by the agreement, care may be authorized within the bed allocation for any veteran eligible under § 17.47. Care in a Federal facility not operated by the Veterans Administration, however, shall not be authorized for any military retiree whose sole basis for eligibility is under § 17.46b, or, except in Alaska and Hawaii, for any retiree of the uniformed services suffering from a chronic disability whose entitlement is under §§ 17.46b, 17.47(b)(2) or 17.47(c)(2) regardless of whether he or she may have dual eligibility under other provisions of § 17.47.

[39 FR 1842, Jan. 15, 1974, as amended at 45 FR 6936, Jan. 31, 1980]

§ 17.50a Emergency use of Department of Defense, Public Health Service or other Federal hospitals.

Hospital care in facilities operated by the Department of Defense or the Public Health Service (or any other agency of the U.S. Government) which do not have beds allocated for the care of Veterans Administration patients may be authorized subject to the limitations enumerated in § 17.50 only in emergency circumstances for any veteran otherwise eligible for hospital care under § 17.47.

[33 FR 19010, Dec. 20, 1968]

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USE OF PUBLIC OR PRIVATE HOSPITALS

§ 17.50b Use of public or private hospitals for veterans.

When it is in the best interests of the Veterans Administration and Veterans Administration patients, and subject to the limitations in § 17.30(w)(3), contracts may be entered into for the use of public or private hospitals for the care of veterans. When demand is only for infrequent use, individual authorizations may be used. Admissions in public or private facilities, however, subject to the provisions of § 17.50c, will only be authorized, whether under a contract or as an individual authorization, for any veteran, if: (38 U.S.C. 610, 601(4))

(a) *For service-connected disability or disability for which discharged.* The veteran is in need of hospital care or medical services for an adjudicated service-connected disability, or for a disability for which the veteran was discharged from service and which was incurred or aggravated in line of duty, or

(b) *For adjunct treatment.* The veteran is in need of hospital care for a non-service-connected disability associated with and held to be aggravating a service-connected disability, or

(c) *For veterans entitled to vocational rehabilitation.* The veteran has been found in need of vocational rehabilitation, and an objective has been selected for the veteran who is pursuing a course of vocational rehabilitation training, and has been medically determined to need care or treatment for any of the reasons enumerated in § 17.36(b), or

(d) *For women veterans.* The veteran is a woman veteran in need of hospital care, or

(e) *For veterans in Puerto Rico and other possessions.* The veteran is a veteran in need of hospital care in the Commonwealth of Puerto Rico or other Territory, Commonwealth or possession of the United States (except the authority under this paragraph expires December 31, 1978), or

(f) *For veterans in Alaska or Hawaii.* The veteran is a veteran in need of hospital care in Alaska or Hawaii whose public or private hospital admission can be accommodated within an average daily patient load per thousand veteran population at Veterans Administration expense in Federal, public or private hospital facilities in Alaska or Hawaii not exceeding the average daily patient load per thousand veteran population hospitalized by the Veterans Administration within the 48 contiguous States (except the authority under this paragraph expires December 31, 1978), or

(g) *For emergent conditions arising during authorized travel.* The veteran is an applicant whose eligibility for hospitalization has been determined, whether for observation or treatment, or for a service-connected disability or non-service-connected disability, and is in need of care in a public or private hospital for an emergent condition which developed during authorized travel to the originally designated hospital preventing completion of travel to the hospital, or during authorized travel after hospital discharge preventing completion of travel to the originally designated point of return (and this will encompass any other medical services necessitated by the emergency, including extra ambulance or other transportation which may also be furnished at Veterans Administration expense), or

(h) *For emergent conditions arising during nursing home care.* The veteran is receiving authorized nursing home care in a community nursing home care facility and requires immediate hospitalization in a public or private hospital for an emergent condition which developed during the nursing home care, or

(i) *For emergent conditions arising during care in a Veterans Administration hospital or Government facility.* The veteran, while hospitalized in a Veterans Administration hospital or Government facility with which the Administrator contracts, who develops a need for emergency treatment of a condition which poses a serious threat to the veteran's life or health; and for which the facility is not staffed or equipped to perform, and transfer to a public or private hospital which has the necessary staff or equipment is the only feasible means of providing the necessary treatment, or (38 U.S.C. 601(4)).

(j) *For any disability of a veteran totally and permanently disabled from a service-connected disability.* The veteran has a total disability permanent in nature resulting from a service-connected disability and has been medically determined to require hospital care or medical services for a non-service-connected condition.

[33 FR 19010, Dec. 20, 1968, as amended at 35 FR 18198, Nov. 28, 1970; 39 FR 1842, Jan. 15, 1974; 39 FR 20376, June 10, 1974; 45 FR 6936, Jan. 31, 1980]

§ 17.50c Limitations on use of public or private hospitals.

The admission of any patient to a private or public hospital at Veterans Administration expense will only be authorized if a Veterans Administration hospital or other Federal facility to which the patient would otherwise be eligible for admission is not feasibly available. A Veterans Administration facility may be considered as not feasibly available when the urgency of the applicant's medical condition, the relative distance of the travel involved, or the nature of the treatment required makes it necessary or economically advisable to use public or private facilities. In those instances where care in public or private hospitals at Veterans Administration expense is authorized because a Veterans Administration or other Federal facility was not feasibly available, as defined in this section, the authorization will be continued after admission only for the period of time required to stabilize or improve the patient's condition to the extent that further care is no longer required to satisfy the purpose for which it was initiated.

[39 FR 17223, May 14, 1974]

§ 17.50d Necessity for prior authorization.

(a) The admission of a veteran to a non-Veterans Administration hospital at Veterans Administration expense must be authorized in advance. In the case of an emergency which existed at the time of admission, an authorization may be deemed a prior authorization if an application, whether formal or informal, by telephone, telegraph or other communication, made by the veteran or by others in his or her behalf is dispatched to the Veterans Administration (1) For veterans in the 48 contiguous States and Puerto Rico, within 72 hours after the hour of admission, including in the computation of time Saturday, Sunday and holidays, or (2) For veterans in a noncontiguous State, territory or possession of the United States (not including Puerto Rico) if facilities for dispatch of application as described in this section are not available within the 72-hour period, provided the application was filed within 72 hours after facilities became available.

(b) When an application for admission by a veteran in one of the 48 contiguous States in the United States or in Puerto Rico has been made more than 72 hours after admission, or more than 72 hours after facilities are available in a noncontiguous State, territory of possession of the United States, authorization for continued care at Veterans Administration expense shall be effective as of the postmark or dispatch date of the application, or the date of any telephone call constituting an informal application.

[42 FR 55212, Oct. 14, 1977]

§ 17.50e Use of public or private hospitals under sharing agreements.

Hospital care in a State or local, public or private hospital facility may be authorized for any veteran entitled to hospital care under § 17.47 when such care is incidental to, or necessary for, the use of a specialized medical resource made available pursuant to an agreement for sharing specialized medical resources.

[33 FR 19011, Dec. 20, 1968]

§ 17.50f Payment for authorized public or private hospital care.

Payment for public or private hospital care authorized under § 17.50b shall not be in excess of the rates the hospital customarily charges the general public for similar services in the community. Payment for ancillary services, supplies, or equipment will be made only to the extent the charges are reasonable and necessary. In the case of services which are out of the ordinary or of an unusual nature, pay-

ment will only be made upon a determination by the Veterans Administration that the services were, in fact, necessary and the charges reasonable. In the case of a hospital under contract with the Veterans Administration, all services and supplies will be paid at rates in accordance with the terms of the contract.

[33 FR 19011, Dec. 20, 1968]

USE OF COMMUNITY NURSING HOME CARE FACILITIES

§ 17.51 Use of community nursing homes.

(a) Nursing home care in a contract public or private nursing home facility may be authorized for the following:

(1) Any veteran eligible for hospital care under § 17.47 who has attained the maximum hospital benefit and for whom a protracted period of nursing home care will be required.

(2) Any person who has been furnished care in any hospital of any of the Armed Forces, who the appropriate Secretary concerned has determined has received maximum hospital benefits but requires a protracted period of nursing home care, and who upon discharge therefrom will become a veteran.

(3) Any veteran who requires nursing home care for a service-connected disability without first requiring a period of hospitalization. Admission may be authorized upon a determination of need therefor by a physician employed by the Veterans Administration or, in areas where no such physician is available, by carrying out such function under contract or fee arrangement.

(b) Such nursing home care will be subject to the following restrictions:

(1) Any veteran eligible under paragraph (a)(1) of this section shall be transferred to the nursing home care facility from a hospital under the direct jurisdiction of the Veterans Administration, except as provided for in § 17.51b,

(2) The nursing home care facility is determined to meet the physical and professional standards prescribed by the Chief Medical Director, and

(3) The cost of the nursing home care will not exceed 45 percent of the cost of care furnished by the Veterans Administration in a general hospital as determined annually. However, the Administrator upon the recommendation of the Chief Medical Director may approve a higher rate not to exceed 50 percent of the cost of such care. (38 U.S.C. 620(a))

(4) Except as provided for in § 17.51a, nursing home care will not be for more than 6 months in the aggregate in connection with any one transfer, except in the case of a veteran whose hospitalization was primarily for a service-connected disability. In such case entitlement to nursing home care under this section is not subject to any time limitation, and

(5) The standards prescribed by the Chief Medical Director and any report of inspection of institutions furnishing nursing home care to veterans shall, to the extent possible, be made available to all Federal, State, and local agencies charged with the responsibility of licensing or otherwise regulating or inspecting such institutions.

[39 FR 1842, Jan. 15, 1974, as amended at 45 FR 6936, Jan. 31, 1980]

§ 17.51a Extensions of community nursing home care beyond 6 months.

Directors of health care facilities may authorize, for any veteran whose hospitalization was not primarily for service-connected disability, an extension of nursing care in a public or private nursing home care facility at Veterans Administration expense beyond 6 months for circumstances of an unusual nature such as when a medical and economic need continues to exist, additional time is required to complete other arrangements for care, or when readmission to a hospital is not deemed professionally advisable despite terminal deterioration of the veteran's medical condition.

[40 FR 57805, Dec. 12, 1975]

§ 17.51b Transfers from facilities for nursing home care in Alaska and Hawaii.

Transfer of any veteran hospitalized in a non-Veterans Administration hospital facility at Veterans Administration expense to a community nursing home facility in Alaska or Hawaii may be authorized subject to the provisions of § 17.51, except paragraph (b)(1).

[39 FR 1843, Jan. 15, 1974]

USE OF FEE BASIS, CONTRACT OR SHARED MEDICAL SERVICES

§ 17.52 Use of services of other Federal agencies.

Pursuant to agreements between the Veterans Administration and other Federal departments or agencies, the Veterans Administration may authorize other Federal agencies or departments to furnish medical services on a fee basis for any veteran eligible for Veterans Administration medical services. Except as provided in §§ 17.50 and 17.50a, medical services will not be authorized under the provisions of this section if furnishing the services involves transfer of a veteran as an inpatient.

[35 FR 18198, Nov. 28, 1970]

§ 17.53 Use of community medical services.

Subject to such terms and conditions as the Chief Medical Director may prescribe, community medical installations, professional associations or individuals may be authorized to furnish medical services of acceptable standards on a fee basis within the limitations of § 17.30(w)(3) or authorized to furnish such services pursuant to the terms of a sharing agreement, or pursuant to the terms of any other agreement, authority for the negotiation of which has been delegated in §§ 17.98 and 17.99 and 41 CFR Part 8-75, for any veteran eligible for the services at Veterans Administration expense. Except as provided in §§ 17.50b through 17.50f, services will not be authorized under the provisions of this section if furnishing services involves transfer of a veteran to a non-Veterans Administration facility as an inpatient. (38 U.S.C. 601(4), 612, 610, 5053, 621, 212)

[45 FR 6937, Jan. 31, 1980]

MEDICAL CARE FOR SURVIVORS AND DEPENDENTS OF CERTAIN VETERANS

§ 17.54 Medical care for survivors and dependents of certain veterans.

(a) Medical care may be provided for: (1) The spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability, and (2) The surviving spouse or child of a veteran who: (i) Died as a result of a service-connected disability, or (ii) At the time of death had a total disability, permanent in nature resulting from a service-connected disability, who are not otherwise eligible for medical care as beneficiaries of the Armed Forces under the provisions of chapter 55 of title 10, United States Code (CHAMPUS). (38 U.S.C. 613)

(b) Medical care authorized by paragraph (a) of this section shall be provided in the same or similar manner and subject to the same or similar limitations as medical care furnished to certain dependents and survivors of active duty and retired members of the Armed Forces being furnished such care as beneficiaries of the Armed Forces. Furthermore, it shall be provided in accordance with the terms and conditions set forth in an agreement between the Administrator and the Secretary of Defense under which the Secretary shall include coverage for such medical care under the contract, or contracts, entered into to provide medical care to beneficiaries of the Armed Forces, and under which the Administrator shall fully reimburse the Secretary for all costs and expenditures made for the purpose of affording the medical care authorized in this section.

(c) In limited situations, the Chief Medical Director or designee may authorize care and treatment to the class of beneficiaries covered by this section in specialized Veterans Administration medical facilities which are uniquely equipped to provide the most effective care and treatment, and which are not otherwise being utilized for the care of veterans. Such medical care may be furnished on either an inpatient or outpatient basis and may be furnished in either Veterans Administration hospitals or in Veterans Administration outpatient clinics.

[39 FR 1843, Jan. 15, 1974, as amended at 45 FR 6937, Jan. 31, 1980]

MEDICAL CARE FOR CZECHOSLOVAKIAN AND POLISH VETERANS

§ 17.55 Medical care for certain former members of Czechoslovakian and Polish Armed Forces.

Hospital, domiciliary care, and medical services may be furnished to former members of the Armed Forces of Poland or Czechoslovakia if they:

(a) Served during World War I or World War II in armed conflict against an enemy of the United States, and

(b) Served during the same period in or with the Armed Forces of France or Great Britain, and

(c) Have been citizens of the United States for 10 years, and

(d) Are not entitled to payment for equivalent care and services under a program established by the foreign government concerned for persons who served in its Armed Forces in World War I or World War II. Such care or services may be furnished those individuals to the same extent as if they had served in the U.S. Armed Forces. Qualifying service may be established through an authenticated certification from the French Ministry of Defense or the British War Office which clearly indicates such military service, or otherwise through satisfactory evidence, under guidelines prescribed by the Chief Medical Director, of having served in the Czechoslovakian or Polish Armed Forces and in or with the Armed Forces of France or Great Britain while in armed conflict against an enemy of the United States during World War I or World War II.

(38 U.S.C. 109c, Pub. L. 94-491)

[43 FR 57144, Dec. 6, 1978]

READJUSTMENT COUNSELING

§ 17.57 Readjustment counseling and related mental health services.

(a) Readjustment counseling, including a general mental and psychological assessment to ascertain whether an individual has mental or psychological problems associated with readjustments to civilian life, and, if indicated, related mental health services will be furnished, under the conditions stated, to veterans:

(1) Who have served on active duty during the Vietnam era, and

(2) Whose application is filed within 2 years from date of discharge or September 30, 1981, whichever is later.

(b) Mental health services may be provided, subject to the conditions of § 17.60(f), only when the Veterans Administration physician or psychologist who conducts the general assessment determines that the veteran needs such services to facilitate readjustment to civilian life. In areas where no Veterans Administration physican or psychologist is available, the Chief Medical Director or designee may arrange for contracts with physicians or psychologists to conduct such assessments.

(c) When the physician or psychologist conducting the assessment determines that the veteran needs services, authorized under paragraph (a) or (b) of this section, to facilitate readjustment to civilian life, the needed readjustment counseling and related mental health services will be provided within the Veterans Administration or other government facilities, or, when such facilities are not capable of furnishing the services required or cannot do so economically because of geographic inaccessibility, by contract under § 17.58.

(d) Mental health services under § 17.60f may be furnished if essential to the effective treatment and readjustment of a veteran furnished services under paragraph (b) of this section.

(38 U.S.C. 612A)

[45 FR 39847, June 12, 1980; 45 FR 41942, June 23, 1980]

§ 17.58 Contracts for readjustment counseling or mental health services.

(a) Contracts for conducting general mental and psychological assessments authorized to be contracted for under § 17.57(b) may be awarded by the Chief Medical Director or designee, but only to responsible contractors determined by that official to be fully capable of making the general assessments.

(b) Contracts for providing readjustment counseling and related mental health services authorized under

§ 17.57 may be awarded by the Chief Medical Director or designee in accordance with applicable Veterans Administration and Federal procurement procedures.

(c) A provider of readjustment counseling and related mental health services must meet the following requirements to be eligible for award of a contract under paragraph (b) of this section.

(1) Be committed in principle, as evidenced by the provider's by-laws or established statement of goals and procedures, to furnishing readjustment or rehabilitative services to Vietnam era veterans, or have a mission statement reflecting a commitment to provide mental health or rehabilitative services.

(2) Demonstrate by means of an established written protocol, plan or procedure an existing capability to furnish Vietnam era veterans the following services:

(i) Family counseling,

(ii) Job and career counseling,

(iii) Substance abuse counseling,

(iv) Psychological counseling,

(v) Social or cultural counseling,

(vi) Physical assessment, medical treatment or therapy, and

(vii) Peer group therapy.

(3) Demonstrate, where incapable of furnishing directly all of the services listed in paragraph (c)(2) of this section, the following:

(i) The manner by which it will assure that those services, which it is not capable of furnishing directly, will be delivered when needed, for example through an agreement with a community mental health center, consulting psychiatrist, or other mechanism,

(ii) The existence of systems to assure that such services as the provider is incapable of furnishing directly are delivered and to assure that the quality of such services is satisfactory,

(iii) That the consultant or other entity with which the primary contractor arranges for providing services listed in paragraph (c)(2) of this section, meets the other requirements of this paragraph as a prerequisite of contract award.

(4) Have evidence, prior to submitting an application to contract under this section, that the provider has satisfactorily furnished to other Vietnam era veterans those services for which the provider seeks to contract.

(5) Include at least one psyciatrist or clinical psychologist on its regular staff (in the case of a contract proposal from an entity which does not have either a psychiatric or clinical psychologist on its regular staff, but which lists a psychiatric or clinical psychologist as a consultant who is on call during regular working hours or otherwise determined by the Chief Medical Director or designee to be reasonably available to perform services under the contract, at no additional cost to the Veterans Administration, this staffing criterion may be considered to be met),

(6) Include at least one staff member who is a Vietnam era veteran or who has had documented, relevant experience in working with Vietnam era veterans, and

(7) Have a commitment to a set of established practices which include the following:

(i) Individualized plans for rendering readjustment counseling and related mental health services to each Vietnam era veteran,

(ii) Scrupulous safeguarding of the records, reports or other private information of clients against disclosure, except with the client's informed written consent, and

(iii) A spirit or atmosphere of helpfulness and dedication to stimulate motivation for self help in the clients.

(d) In making and approving awards under this section the Chief Medical Director or designee will give preference to the following factors:

(1) Experience in rendering readjustment counseling and related mental health services to Vietnam era veterans.

(2) Evidence of commitment to the purpose of 38 U.S.C. 612A, and to the interest of Vietnam era veterans generally.

(3) The degree to which the anticipated quantity and quality of the proposed services appears favorable in relation to the rates of compensation and other fees requested, particularly as contrasted with comparable data from other providers.

(4) Substantial and reliable evidence that the provider's staff conveys a spirit of helpfulness to its clientele and successfully motivates them for self help, particularly if this can be objectively demonstrated. (38 U.S.C. 612A)

[45 FR 39847, June 12, 1980]

OUTPATIENT TREATMENT

§ 17.59 Outpatient care for research purposes.

Subject to the provisions of § 17.62(g), any person who is a bona fide volunteer may be furnished outpatient treatment when the treatment to be rendered is part of an approved Veterans Administration research project and there are insufficient veteran-patients suitable for the project.

[35 FR 11470, July 17, 1970]

§ 17.60 Outpatient care for eligible persons.

Medical services may be furnished, within the limits of Veterans Administration facilities, to the following applicants under the conditions stated, except that applicants for dental treatment, as defined in paragraphs (a) to (d) inclusive of this section must also meet the applicable provisions of § 17.123:

(a) *For service-connected disability.* Persons discharged or released from active military, naval, or air service, who are in need of treatment for a disease or injury adjudicated by the Veterans Administration as incurred or aggravated in such service.

(b) *For disability for which discharged.* Persons who were discharged or released under other than dishonorable conditions from active military, naval or air service for disability incurred or aggravated in line of duty in active service who are in need of treatment for that condition which resulted in discharge or release for disability. A formal claim for disability compensation will not be required of an applicant eligible for outpatient treatment by reason of discharge or release for disability incurred or aggravated in the line of duty; and a denial of a claim for disability compensation will not debar outpatient treatment for such disability.

(c) *For veterans entitled to vocational rehabilitation.* A veteran who has been found in need of training authorized under 38 U.S.C. Ch. 31, and for whom an objective has been selected or who is pursuing vocational rehabilitation training is entitled to such medical services as are medically determined necessary for any of the reasons enumerated in § 17.36(b). A veteran in need of such training may also be furnished in a clinic operated by the Veterans Administration any examination or immunization necessary to qualify him or her for admission to a training facility, except the Department of Medicine and Surgery may not authorize incidental transportation.

(d) *For Spanish-American War veterans.* Persons who served in the active military, or naval service during the Spanish-American War, or Indian wars, when discharged from such service under other than dishonorable conditions who are in need of outpatient treatment. Such outpatient treatment will not include medical care and treatment necessary to and part of hospital care furnished a patient while in a hospital.

(e) *For prehospital care.* Persons eligible for hospital care under § 17.47, where a professional determination is made that such care is reasonably necessary in preparation for admission of such persons for care, or (to the extent that facilities are available) to obviate the need for bed care. (38 U.S.C. 612(f))

(f) *For posthospital care.* Persons eligible for hospital care under § 17.47 who have been furnished hospital care, and outpatient medical care is reasonably necessary to complete treatment incident to such hospital care. Said service may be provided not to exceed 12 months after discharge from the inhospital treatment except where the attending physician finds that a longer period is required by virtue of the disability being treated. (38 U.S.C. 612(f))

(g) *For adjunct treatment.* Outpatient treatment may be authorized in accordance with prescribed principles for an adjunct non-service-connected condition associated with and held to be aggravating a disability from a dis-

ease or injury for which the veteran is entitled to receive outpatient care under this section. The opinion of the Chief Medical Director may be requested in any individual case where advice is desired as to the propriety of furnishing adjunct treatment.

(h) *For veterans 50 percent or more disabled from a service-connected disability.* Outpatient care, except outpatient dental treatment, may be authorized to treat any nonservice-connected disability of a veteran who has a service-connected disability rated at 50 percent or more. (38 U.S.C. 612)

(i) *For veterans who are housebound or in need of aid and attendance.* Any veteran who is in receipt of increased pension or additional compensation or allowance based on the need of regular aid and attendance or by reason of being permanently housebound, or who, but for the receipt of retired pay, would be in receipt of such pension, compensation or allowance. (38 U.S.C. 612(g))

(j) *Home health services.* Home health services determined by the Veterans Administration to be necessary for effective and economical treatment of a disability may be furnished to any veteran to include home improvement and structural alterations as are necessary to assure the continuation of treatment or to provide access to the home or to essential lavatory and sanitary facilities.

(1) The cost to the Veterans Administration or reimbursement by the Veterans Administration to the veteran will not exceed $2,500 for home improvement or structural alterations to veterans being treated for a service-connected disability, and,

(2) Will not exceed $600 for veterans being treated for a nonservice-connected disability and then only to veterans receiving authorized posthospital care under the authority of § 17.60(f) or to veterans rated at 50 percent or more service connected. (38 U.S.C. 612(f))

[32 FR 13815, Oct. 4, 1967, as amended at 33 FR 5299, Apr. 3, 1968; 35 FR 17947, Nov. 21, 1970; 39 FR 1843, Jan. 15, 1974; 45 FR 6937, Jan. 31, 1980]

§ 17.60a Outpatient care for military retirees and other beneficiaries.

Outpatient care for military retirees and other beneficiaries for which charges shall be made as required by § 17.62, may be authorized for persons properly referred by authorized officials of other Federal agencies for which the Administrator of Veterans Affairs may agree to render such service under the conditions stipulated by the Administrator and pensioners of nations allied with the United States in World War I and World War II when duly authorized.

[32 FR 13815, Oct. 4, 1967, as amended at 45 FR 6937, Jan. 31, 1980]

§ 17.60b Outpatient care for Veterans Administration employees and others in emergencies.

Outpatient care for which charges shall be made as required by § 17.62, may be authorized for employees of the Veterans Administration, their families, and the general public in emergencies, subject to conditions stipulated by the Administrator of Veterans Affairs.

[32 FR 13816, Oct. 4, 1967]

§ 17.60c Sharing specialized medical resources on an outpatient basis.

The use of a specialized medical resource or any medical service incidental to, and necessary for, its use under a sharing agreement entered into under § 17.210, may be authorized on an outpatient basis if:

(a) In the case of a specialized medical resource and services made available by the other party to the sharing agreement, the patient is a veteran eligible under any provision of § 17.60, or

(b) In the case of a specialized medical resource and services available within the limits of Veterans Administration facilities, the patient is a person designated by the other party to the sharing agreement as a patient to be benefited under the agreement.

[32 FR 13816, Oct. 4, 1967]

§ 17.60d Prescriptions filled.

Any prescription, which is not part of authorized Veterans Administration hospital or outpatient care, for drugs

and medicines ordered by a private or non-Veterans Administration doctor of medicine or doctor of osteopathy duly licensed to practice in the jurisdiction where the prescription is written, shall be filled by a Veterans Administration pharmacy, provided:

(a) The prescription is for a person who is receiving housebound benefits or who, based on the need for regular aid and attendance, is receiving additional compensation or allowance (wartime or peacetime) under 38 U.S.C. chapter 11, or increased pension as a veteran of the Mexican border period, World War I, World War II, the Korean conflict, or the Vietnam era (or who is receiving a greater compensation benefit rather than such aid and attendance pension to which the veteran has been adjudicated to be presently eligible). An aid and attendance pensioner who is eligible for drugs and medicines under this section whose pension has been discontinued because of excess income may continue to be provided with drugs and medicines even though his annual income exceeds the permissible income limitations, so long as it is no more than $500 above the maximum, and

(b) The drugs and medicines are prescribed as specific therapy in the treatment of any of the veteran's illnesses or injuries.

[32 FR 13816, Oct. 4, 1967, as amended at 36 FR 4782, Mar. 12, 1971; 45 FR 6937, Jan. 31, 1980]

§ 17.60e Prescriptions in Alaska, and territories and possessions.

In Alaska and territories and possessions, where there are no Veterans Administration pharmacies, the expenses of any prescriptions filled by a private pharmacist which otherwise could have been filled by a Veterans Administration pharmacy under § 17.60d, may be reimbursed.

[32 FR 13816, Oct. 4, 1967]

§ 17.60f Mental health services.

Mental health services, as defined in § 17.30(l)(2), may be furnished the members of the immediate family, or legal guardian of the person or the individual in whose household such person certifies an intention to live, provided the person is eligible for care under provisions of §§ 17.47, 17.54, or 17.60(a), (b) or (f). (38 U.S.C. 601(5), 601(6), 612, 613(b))

[45 FR 6937, Jan. 31, 1980]

§ 17.60g Priorities for medical services.

Unless compelling medical reasons indicate otherwise, eligible veterans shall be furnished outpatient medical services on a priority basis in the following order:

(a) To any veteran for a service-connected disability,

(b) To any veteran with a service-connected condition, rated at 50 percent or more,

(c) To any veteran with a disability rated as service connected,

(d) To any veteran eligible under the provisions of § 17.60(i). (38 U.S.C. 612(i))

[45 FR 6937, Jan. 31, 1980]

§ 17.60h Immunizations under national programs.

Veterans receiving care for any disability in a Veterans Administration health care facility may have administered to them vaccines for immunization as part of a national immunization program. Participation by veterans in a national immunization program must be voluntary. (38 U.S.C. 612(j))

[45 FR 6938, Jan. 31, 1980]

Appointments

§ 17.61 Refusal of treatment by unnecessarily breaking appointments.

A patient under outpatient medical treatment who breaks an appointment without a reasonable excuse for such action will be informed that a repetition of the offense will be deemed to be a refusal of Government treatment. If such patient breaks a second appointment, without at least 24 hours' notice or a reasonable excuse, it will be deemed that he has refused Government treatment. Thereafter no further treatment will be furnished until he has made a specific formal application therefor and has satisfactorily evinced a willingness to accept Gov-

ernment treatment and to cooperate with the Government agency providing the treatment, by keeping his appointments or by giving at least 24 hours' notice where an appointment must necessarily be broken. Where an appointment is broken without notice and satisfactory reasons are shown for the breaking of the appointment and it is also satisfactorily shown that circumstances attending the breaking of the appointment were such that notice could not be given, the patient will not be deemed to have refused treatment. Nothing in this section will be construed to prevent a patient from receiving the benefit of treatment for an emergency condition that may arise during the time when he has been determined to be "Not entitled to treatment" as a result of refusal.

[23 FR 6502, Aug. 22, 1958]

CHARGES, WAIVERS, AND COLLECTIONS

§ 17.62 Charges for care or services.

Charges at the indicated rates shall be made for Veterans Administration hospital care or medical services (including, but not limited to, dental services, supplies, medicines, orthopedic and prosthetic appliances, and domiciliary or nursing home care) as follows:

(a) *Furnished in error or on tentative eligibility.* Charges at rates prescribed by the Chief Medical Director shall be made for inpatient or outpatient care or services (including domiciliary care) authorized for any person on the basis of eligibility as a veteran or a tentative eligibility determination under § 17.35 but he was subsequently found to have been ineligible for such care or services as a veteran because the military service or any other eligibility requirement was not met, or

(b) *Furnished in a medical emergency.* Charges at rates prescribed by the Chief Medical Director shall be made for any inpatient or outpatient care or services rendered any person in a medical emergency who was not eligible for such care or services as a veteran, if:

(1) The care or services were rendered as a humanitarian service, under § 17.46(c)(1) to a person neither claiming eligibility as a veteran nor for whom the establishment of eligibility as a veteran was expected, or

(2) The person for whom care or services were rendered was a Veterans Administration employee or a member of a Veterans Administration employee's family; or

(c) *Furnished beneficiaries of the Department of Defense or other Federal agencies.* Except as provided for in paragraph (f) of this section and the second sentence of this paragraph, charges at rates prescribed by the Office of Management and Budget shall be made for any inpatient or outpatient care or services authorized for a member of the Armed Forces on active duty or for any beneficiary or designee of any other Federal agency. Charges for services provided a member or former member of a uniformed service who is entitled to retired or retainer pay, or equivalent pay, will be at rates prescribed by the Administrator (E.O. 11609, dated July 22, 1971, 36 FR 13747), or

(d) *Furnished pensioners of allied nations.* Charges at rates prescribed by the Chief Medical Director shall be made for any inpatient or outpatient care or services rendered a pensioner of a nation allied with the United States in World War I and World War II; or

(e) *Furnished under sharing agreements.* Charges at rates agreed upon in an agreement for sharing specialized medical resources shall be made for all medical care or services, either on an inpatient or outpatient basis, rendered to a person designated by the other party to the agreement as a patient to be benefited under the agreement; or

(f) *Furnished military retirees with chronic disability.* Charges for subsistence at rates prescribed by the Chief Medical Director shall be made for the period during which hospital care is rendered when such care is rendered to a member or former member of the Armed Forces required to pay the subsistence rate under § 17.47 (b)(2) and (c)(2).

(g) *Furnished for research purposes.* Charges will not be made for medical services, including transportation, furnished as part of an approved Veterans Administration research project,

except that if the services are furnished to a person who is not eligible for the services as a veteran, the medical care appropriation shall be reimbursed from the research appropriation at the same rates used for billings under paragraph (b) of this section.

[32 FR 11382, Aug. 5, 1967, as amended at 34 FR 7807, May 16, 1969; 35 FR 11470, July 17, 1970; 36 FR 18794, Sept. 22, 1971]

§ 17.63 Collection of claims.

The collection of claims against persons in default of payment of charges made under any provision of § 17.62 shall be aggressive, on a timely basis with effective follow-up, and the provisions referable to claims collections in § 1.900 series of this chapter are for application.

[32 FR 11382, Aug. 5, 1967]

§ 17.64 Referrals of compromise settlement offers.

Any offer to compromise or settle any charges or claim for $20,000 or less asserted by the Veterans Administration in connection with the medical program shall be referred as follows:

(a) *To Chiefs of Fiscal activities.* If the debt represents charges made under § 17.62(a), the compromise offer shall be referred to the Chief of the Fiscal activity of the station for application of the collection standards in § 1.900 et seq. of this chapter, provided:

(1) The debt does not exceed $1,000, and

(2) There has been a previous denial of waiver of the debt by a field station Committee on Waivers and Compromises.

(b) *To Chief Attorneys.* If the debt in any amount represents charges for medical services for which there is or may be a claim against a third party tort-feasor or under workman's compensation laws or Public Law 87-693; 76 Stat. 593 (see § 1.903 of this chapter) or involves a claim contemplated by § 1.902 of this chapter over which the Veterans Administration lacks jurisdiction, the compromise offer (or request for waiver or proposal to terminate or suspend collection action) shall be promptly referred to the field station Chief Attorney having jurisdiction in the area in which the claim arose, or

(c) *To Committee on Waivers and Compromises.* If one of the following situations contemplated in paragraph (c)(1) through (3) of this section applies

(1) If the debt represents charges made under § 17.62(a), but is not of a type contemplated in paragraph (a) of this section, or

(2) If the debt represents charges for medical services made under § 17.62(b), or

(3) A claim arising in connection with any transaction of the Department of Medicine and Surgery for which the instructions in paragraph (a) or (b) of this section or in § 17.65a(c) are not applicable, then, the compromise offer should be referred for disposition under § 1.900 et seq. of this chapter to the field station Committee on Waivers and Compromises which shall take final action.

[39 FR 26403, July 19, 1974]

§ 17.65 Terminations and suspensions.

Any proposal to suspend or terminate collection action on any charges or claim for $20,000 or less asserted by the Veterans Administration in connection with the medical program shall be referred as follows:

(a) *Of charges for medical services.* If the debt represents charges made under § 17.62 (a) or (b) questions concerning suspension or termination of collection action shall be referred to the Chief of the Fiscal activity of the station for application of the collection standards in § 1.900 et seq. of this chapter, or

(b) *Of other debts.* If the debt is of a type other than those contemplated in paragraph (a) of this section, questions concerning suspension or termination of collection action shall be referred in accordance with the same referral procedures for compromise offers (except the Fiscal activity shall make final determinations in terminations or suspensions involving claims of $150 or less pursuant to the provisions of § 1.900 et seq. of this chapter.)

[34 FR 7807, May 16, 1969, as amended at 39 FR 26403, July 19, 1974]

§ 17.65a Waivers.

Applications or requests for waiver of debts or claims asserted by the Veterans Administration in connection with the medical program generally will be denied by the station Fiscal activity on the basis there is no legal authority to waive debts, unless the question of waiver should be referred as follows:

(a) *Of charges for medical services.* If the debt represents charges made under § 17.62(a), the application or request for waiver should be referred for disposition under § 1.900 et seq. of this chapter to the field station Committee on Waivers and Compromises which shall take final action, or

(b) *Of claims against third persons and other claims.* If the debt is of a type contemplated in § 17.64(b), the waiver question should be referred in accordance with the same referral procedures for compromise offers in such categories of claims, or

(c) *Other debts.* If the debt represents any claim or charges other than those contemplated in paragraphs (a) and (b) of this section, and is a debt for which waiver has been specifically provided for by law or under the terms of a contract, initial action shall be taken at the station level for referral of the request for waiver through channels for action by the appropriate designated official. If, however, the question of waiver may also involve a concurrent opportunity to negotiate a compromise settlement, the application shall be referred to the Committee on Waivers and Compromises.

[39 FR 26403, July 19, 1974]

DISCIPLINARY CONTROL OF BENEFICIARIES RECEIVING HOSPITAL, DOMICILIARY OR NURSING HOME CARE

§ 17.66 Authority for disciplinary action.

The good conduct of beneficiaries receiving hospitalization for observation and examination or for treatment, or receiving domiciliary or nursing home care in facilities under direct and exclusive jurisdiction of the Veterans Administration, will be maintained by corrective and disciplinary procedure formulated by the Veterans Administration. Such corrective and disciplinary measures, to be selectively applied in keeping with the comparative gravity of the particular offense, will consist, in respect to hospital patients, of such penalties as the withholding for a determined period of pass privileges, exclusion from entertainments, or disciplinary discharge; and, in respect to domiciled members, such penalties as confinement to sections or grounds, deprivation of privileges, enforced furlough, or disciplinary discharge. Also, for any violation of the Veterans Administration rules set forth in § 1.218, or other Federal laws on Veterans Administration property, a beneficiary is subject to the penalty prescribed for the offense.

[38 FR 24366, Sept. 7, 1973]

CEREMONIES

§ 17.70 [Reserved]

§ 17.71 Services or ceremonies on Veterans Administration hospital or center reservations.

(a) Services or ceremonies on Veterans Administration hospital or center reservations are subject to the following limitations:

(1) All activities must be conducted with proper decorum, and not interfere with the care and treatment of patients. Organizations must provide assurance that their members will obey all rules in effect at the hospital or center involved, and act in a dignified and proper manner;

(2) Partisan activities are inappropriate and all activities must be nonpartisan in nature. An activity will be considered partisan and therefore inappropriate if it includes commentary in support of, or in opposition to, or attempts to influence, any current policy of the Government of the United States or any State of the United States. If the activity is closely related to partisan activities being conducted outside the hospital or center reservations, it will be considered partisan and therefore inappropriate.

(b) Requests for permission to hold services or ceremonies will be addressed to the Administrator, or the Director of the Veterans Administration hospital or center involved. Such applications will describe the proposed

activity in sufficient detail to enable a determination as to whether it meets the standards set forth in paragraph (a) of this section. If permission is granted, the Director of the hospital or center involved will assign an appropriate time, and render assistance where appropriate. No organization will be given exclusive permission to use the hospital or center reservation on any particular occasion. Where several requests are received for separate activities, the Director will schedule each so as to avoid overlapping or interference, or require appropriate modifications in the scope or timing of the activity.

[35 FR 2389, Feb. 3, 1970]

REIMBURSEMENT FOR LOSS BY NATURAL DISASTER OF PERSONAL EFFECTS OF HOSPITALIZED OR NURSING HOME PATIENTS

§ 17.75 Conditions of custody.

When the personal effects of a patient who has been or is hospitalized or receiving nursing home care in a Veterans Administration hospital or center were or are duly delivered to a designated location for custody and loss of such personal effects has occurred or occurs by fire, earthquake, or other natural disaster, either during such storage or during laundering, reimbursement will be made as provided in §§ 17.76 and 17.77.

[39 FR 1843, Jan. 15, 1974]

§ 17.76 Submittal of claim for reimbursement.

The claim for reimbursement for personal effects damaged or destroyed will be submitted by the patient to the Director. The patient will separately list and evaluate each article with a notation as to its condition at the time of the fire, earthquake, or other natural disaster i.e. whether new, worn, etc. The date of the fire, earthquake, or other natural disaster will be stated. It will be certified by a responsible official that each article listed was stored in a designated location at the time of loss by fire, earthquake, or other natural disaster or was in process of laundering. He will further state whether the loss of each article was complete or partial, permitting of some further use of the article. The responsible official will certify that the amount of reimbursement claimed on each article of personal effects is not in excess of the fair value thereof at time of loss. The certification will be prepared in triplicate, signed by the responsible officer who made it, and countersigned by the Director of the hospital or center. After the above papers have been secured, voucher will be prepared, signed, and certified, and forwarded to the Fiscal Officer for his approval, payment to be made in accordance with fiscal procedure. The original list of property and certificate are to be attached to voucher.

[39 FR 1843, Jan. 15, 1974]

§ 17.77 Claims in cases of incompetent patients.

Where the patient is insane and incompetent, he will not be required to make claim for reimbursement for personal effects lost by fire, earthquake, or other natural disaster as required under the provisions of § 17.76. The responsible official will make claim for him, adding the certification in all details as provided for in § 17.76. After countersignature of this certification by the Director, payment will be made as provided in § 17.76, and the amount thereby disbursed will be turned over to the Director for custody.

[39 FR 1843, Jan. 15, 1974]

REIMBURSEMENT TO EMPLOYEES FOR THE COST OF REPAIRING OR REPLACING CERTAIN PERSONAL PROPERTY DAMAGED OR DESTROYED BY PATIENTS OR MEMBERS

§ 17.78 Adjudication of claims.

(a) *Claims comprehended.* Claims for reimbursing Veterans Administration employees for cost of repairing or replacing their personal property damaged or destroyed by patients or members while such employees are engaged in the performance of their official duties will be adjudicated by the Director of the station concerned. Such claims will be considered under the following conditions, both of which must have existed and, if either one is lacking, reimbursement or payment

for the cost or repair of the damaged article will not be authorized:

(1) The claim must be for an item of personal property normally used by the employee in his day to day employment, e.g., eyeglasses, hearing aids, clothing, etc., and,

(2) Such personal property was damaged or destroyed by a patient or domiciliary member while the employee was engaged in the performance of his official duties.

Reimbursement or payment as provided in this paragraph will be made in a fair and reasonable amount, taking into consideration the condition and reasonable value of the article at the time it was damaged or destroyed.

(b) *Effective date for filing claim.* Claims for reimbursing employees for the cost of repairing or replacing personal property damaged as set forth in paragraph (a) of this section, may be considered under this section only for such property damaged or destroyed on or after enactment of Public Law 87-574, August 6, 1962.

[28 FR 5083, May 22, 1963, as amended at 39 FR 1843, Jan. 15, 1974]

PAYMENT AND REIMBURSEMENT OF THE EXPENSES OF MEDICAL SERVICES NOT PREVIOUSLY AUTHORIZED

§ 17.80 Payment or reimbursement of the expenses of hospital care and other medical services not previously authorized.

To the extent allowable, payment or reimbursement of the expenses of care, not previously authorized, in a private or public (or Federal) hospital not operated by the Veterans Administration, or of any medical services not previously authorized including transportation (except prosthetic appliances, similar devices, and repairs) may be paid on the basis of a claim timely filed, under the following circumstances:

(a) *For veterans with service-connected disabilities.* Care or services not previously authorized were rendered to a veteran in need of such care or services: (1) For an adjudicated service-connected disability; (2) for non-service-connected disabilities associated with and held to be aggravating a service-connected disability; (3) for any disability of a veteran who has a total disability permanent in nature resulting from a service-connected disability; (4) for any illness, injury or dental condition in the case of a veteran who is found to be in need of vocational rehabilitation and for whom an objective had been selected or who is pursuing a course of vocational rehabilitation training and is medically determined to have been in need of care or treatment for any of the reasons enumerated in § 17.36(b); and

(b) *In a medical emergency.* Care and services not previously authorized were rendered in a medical emergency of such nature that delay would have been hazardous to life or health, and

(c) *When Federal facilities are unavailable.* Veterans Administration or other Federal facilities were not feasibly available, and an attempt to use them beforehand would not have been reasonable, sound, wise, or practicable, or treatment had been or would have been refused.

[39 FR 1844, Jan. 15, 1974]

§ 17.81 Payment or reimbursement of the expenses of repairs to prosthetic appliances and similar devices furnished without prior authorization.

The expenses of repairs to prosthetic appliances, or similar appliances, therapeutic or rehabilitative aids or devices, furnished without prior authorization, but incurred in the care of a service-connected disability (or, in the case of a veteran entitled to vocational rehabilitation, incurred for any of the reasons enumerated in § 17.36(b)) may be paid or reimbursed on the basis of a timely filed claim, if:

(a) Obtaining the repairs locally was necessary, expedient, and not a matter of preference to using authorized sources, and

(b) The costs were reasonable, except that where it is determined the costs were excessive or unreasonable, the claim may be allowed to the extent the costs were deemed reasonable and disallowed as to the remainder. In no circumstances will any claim for repairs be allowed to the extent the costs exceed $35.

[33 FR 19011, Dec. 20, 1968]

§ 17.82 Claimants.

A claim for payment or reimbursement of services not previously authorized may be filed by the veteran who received the services (or his/her guardian) or by the hospital, clinic, or community resource which provided the services, or by a person other than the veteran who paid for the services.

[39 FR 1844, Jan. 15, 1974, as amended at 45 FR 53807, Aug. 13, 1980]

§ 17.83 Preparation of claims.

Claims for costs of services not previously authorized shall be on such forms as shall be prescribed and shall include the following:

(a) The claimant shall specify the amount claimed and furnish bills, vouchers, invoices, or receipts or other documentary evidence establishing that such amount was paid or is owed, and

(b) The claimant shall provide an explanation of the circumstances necessitating the use of community medical care, services, or supplies instead of Veterans Administration care, services, or supplies, and

(c) The claimant shall furnish such other evidence or statements as are deemed necessary and requested for adjudication of the claim.

[33 FR 19011, Dec. 20, 1968, as amended at 39 FR 1844, Jan. 15, 1974]

§ 17.84 Where to file claims.

Claims for payment or reimbursement of the expenses of services not previously authorized should be filed as follows:

(a) *For services rendered in the United States.* Claims for the expenses of care or services rendered in the United States, including the Territories or Possessions of the United States, should be filed with the Chief, Outpatient Service or Clinic Director of the Veterans Administration facility or Veterans Administration medical installation which serves the region in which the care or services were rendered, and

(b) *For services rendered in the Philippines.* Claims for the expenses of care or services rendered in the Republic of the Philippines should be filed with the Veterans Administration Regional Office, Manila, and

(c) *For services rendered in Canada.* Claims for the expenses of care or services rendered in Canada should be filed with the Chief, Outpatient Service, Veterans Administration Medical Center, 50 Irving Street NW., Washington, D.C. 20422, and

(d) *For services rendered in other foreign countries.* Claims for the expenses of care or services rendered in other foreign countries should be filed with the American Embassy or Consulate, and

(e) *For services rendered in Puerto Rico.* Claims for the expenses of care or services rendered in the Commonwealth of Puerto Rico should be filed with the Veterans Administration Medical and Regional Center, San Juan, P.R.

[33 FR 19011, Dec. 20, 1968, as amended at 39 FR 1844, Jan. 15, 1974; 45 FR 53807, Aug. 13, 1980]

§ 17.85 Timely filing.

Claims for payment or reimbursement of the expenses of medical care or services not previously authorized must be filed within the following time limits:

(a) A claim must be filed within 2 years after the date the care or services were rendered (and in the case of continuous care, payment will not be made for any part of the care rendered more than 2 years prior to filing claim), or

(b) In the case of care or services rendered prior to a Veterans Administration adjudication allowing service connection, a claim must be filed within 2 years of the date of notification of such allowance of an original or reopened claim for service connection of the disability for which treatment was rendered, except payment will not be made for any care rendered prior to the effective date of the grant of service connection or more than 2 years prior to filing the original or reopened claim for service connection which resulted in allowance, whichever is later, or

(c) Claims for medical care and services rendered on or after January 1, 1971 for treatment of a non-service-

connected illness or injury for a veteran who has a total disability permanent in nature resulting from a service-connected disability must be filed by August 2, 1975. Claims filed after August 2, 1975, will be subject to the time limit stated in paragraph (a) of this section.

[33 FR 19012, Dec. 20, 1968, as amended at 39 FR 1844, Jan. 15, 1974; 45 FR 53807, Aug. 13, 1980]

§ 17.86 Date of filing claims.

The date of filing any claim for payment or reimbursement of the expenses of medical care and services not previously authorized shall be the postmark date of a formal claim, or the date of any preceding telephone call, telegram, or other communication constituting an informal claim.

[39 FR 1844, Jan. 15, 1974]

§ 17.87 Allowable rates and fees.

When it has been determined a veteran has received public or private hospital care or medical services the expenses of which may be paid or reimbursed under § 17.80, such expenses shall be paid only to the extent they are reasonable and not in excess of rates or fees the hospital or provider of services charges the general public for similar services in the community. Fees paid to doctors of medicine or doctors of osteopathy for any service shall not exceed the fee provided for such service in the State fee schedule in effect where the service was furnished.

[33 FR 19012, Dec. 20, 1968]

§ 17.88 Retroactive payments prohibited.

When a claim for payment or reimbursement of expenses of services not previously authorized has not been timely filed in accordance with the provisions of § 17.85, the expenses of any such care or services rendered prior to the date of filing the claim shall not be paid or reimbursed. In no event will a bill or claim be paid or allowed for any care or services rendered prior to the effective date of any law, or amendment to the law, under which eligibility for the medical services at Veterans Administration expense has been established.

[39 FR 1844, Jan. 15, 1974]

§ 17.89 Payment for treatment dependent upon preference prohibited.

No reimbursement or payment of services not previously authorized will be made when such treatment was procured through private sources in preference to available Government facilities.

[39 FR 1844, Jan. 15, 1974]

§ 17.90 Payment of abandoned claims prohibited.

Any informal claim for the payment or reimbursement of medical expenses which is not followed by a formal claim, or any formal claim which is not followed by necessary supporting evidence, within 1 year from the date of the request for a formal claim or supporting evidence shall be deemed abandoned, and payment or reimbursement shall not be authorized on the basis of such abandoned claim or any future claim for the same expenses. For the purpose of this section, time limitations shall be computed from the date following the date of request for a formal claim or supporting evidence.

[33 FR 19012, Dec. 20, 1968]

§ 17.91 Appeals.

When any claim for payment or reimbursement of expenses of medical care or services rendered in non-Veterans Administration facilities or from non-Veterans Administration resources has been disallowed, the claimant shall be notified of the reasons for the disallowance and of the right to initiate an appeal to the Board of Veterans Appeals by filing a Notice of Disagreement, and shall be furnished such other notices or statements as are required by Part 19 of this chapter, governing appeals.

[33 FR 19012, Dec. 20, 1968]

DELEGATION OF AUTHORITY

§ 17.95 Authority to adjudicate reimbursement claims.

The Veterans Administration medical installation having responsibility for the fee basis program in the region

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or territory (including the Republic of the Philippines) served by such medical installation shall adjudicate all claims for the payment or reimbursement of the expenses of services not previously authorized rendered in the region or territory.

[39 FR 1844, Jan. 15, 1974]

§ 17.96 Authority to adjudicate foreign reimbursement claims.

The VA Medical Center, Washington, D.C., shall adjudicate claims for the payment or reimbursement of the expenses of services not previously authorized rendered in any foreign country except the Republic of the Philippines.

[39 FR 1844, Jan. 15, 1974, as amended at 45 FR 6938, Jan. 31, 1980]

§ 17.98 Authority to approve sharing agreements, contracts for scarce medical specialist services and contracts for other medical services.

The Chief Medical Director is delegated authority to enter into

(a) Sharing agreements authorized under the provisions of 38 U.S.C. 5053 and § 17.210 and which may be negotiated pursuant to the provisions of 41 CFR 8-3.204(c);

(b) Contracts with schools and colleges of medicine, osteopathy, dentistry, podiatry, optometry, and nursing, clinics, and any other group or individual capable of furnishing such services to provide scarce medical specialist services at Veterans Administration health care facilities (including, but not limited to, services of physicians, dentists, podiatrists, optometrists, nurses, physicians' assistants, expanded function dental auxiliaries, technicians, and other medical support personnel); and

(c) When a sharing agreement or contract for scarce medical specialist services is not warranted, contracts authorized under the provisions of 38 U.S.C. 213 for medical and ancillary services. The authority under this section generally will be exercised by approval of proposed contracts or agreements negotiated at the health care facility level. Such approval, however, will not be necessary in the case of any purchase order or individual authorization for which authority has been delegated in § 17.99. All such contracts and agreements will be negotiated pursuant to 41 CFR Chapters 1 and 8. (38 U.S.C. 212, 213, 4117, 5053)

[45 FR 6938, Jan. 31, 1980]

§ 17.99 Authority to procure fee basis services, community hospital or nursing home care and individually authorized services.

The Director of a VA medical center, domiciliary, or outpatient clinic, or his or her designated contracting officer, may enter into: (a) Arrangements authorized under the provisions of 38 U.S.C. 213 for providing medical services on a fee basis or on an individually authorized basis subject to the limitations in § 17.53; (b) contracts or arrangements on an individually authorized basis pursuant to § 17.50b to provide care in public and private hospitals; and (c) contracts authorized by 38 U.S.C. 620 for furnishing nursing home care in community facilities.

[35 FR 18198, Nov. 28, 1970, as amended at 45 FR 6938, Jan. 31, 1980]

Transportation of Claimants and Beneficiaries

§ 17.100 Transportation of claimants and beneficiaries.

Transportation at Government expense will be authorized for eligible claimants and beneficiaries. In no event shall payment be made under the provision of this section: unless the persons claiming reimbursement have been determined eligible based upon an annual declaration and certification of inability to defray expenses of such travel (except for the veteran receiving benefits for or in connection with a service-connected disability; for the cost of travel by privately-owned vehicle in any amount in excess of the cost of such travel by public transportation unless public transportation is not reasonably accessible or would be medically inadvisable; for the cost of travel in excess of the actual expense incurred by any person as certified by that person in writing.) (38 U.S.C. 111) Travel will be authorized for the following purposes:

(a) *Admission.* (1) Admission of applicants under §§ 17.47 and 17.54.

(2) Hospital admission for observation and examination.

(3) Admission for domiciliary care of applicants under § 17.47(c)(3) and (d).

(b) *Readmissions.* Hospital readmissions, when medically determined necessary to observe progress, modify treatment or diet, etc.

(c) *Preparatory and posthospital care.* When necessary to the provision of medical services furnished veterans under § 17.60(e) and (f). The authority under this paragraph is subject to the exceptions stated in paragraph (h) of this section.

(d) *Authorized absence.* Transportation will not be furnished beneficiaries who are on authorized absence, to depart from or return to Veterans Administration health care facilities, except that if a patient or member in such status develops an emergent condition and the patient or member (or guardian, if there be one) is without funds to return such patient or member to a Veterans Administration health care facility, travel may be approved by the Director of the Veterans Administration facility to which the patient or member is to be returned.

(e) *Interfacility transfers for treatment, diagnosis, or domiciliary care.* Prior consent of the District Medical Director will be had for transfers of patients or members en bloc within the area, and of both District Medical Directors if interarea transfers are involved. Interfacility transfer will include transfer from a Veterans Administration medical center to nursing home care.

(f) *Discharge.* (1) Upon regular discharge from hospitalization for treatment, observation and examination, or nursing home, or domiciliary care, return transportation to the point from which the beneficiary had proceeded, or to another point if no additional expense be thereby caused the Government.

(2) A patient in a terminal condition may be discharged to his or her home or transferred to a hospital suitable and nearer that home, regardless of whether travel so required exceeds that covered in proceeding to the hospital of original admission.

(3) Transportation may be furnished to a point other than that from which a patient had proceeded to a hospital upon a showing of bona fide change of address of the patient's residence during the period of hospital care.

(4) No return transportation will be supplied a patient who receives an irregular discharge from hospital or nursing home care, unless the patient executes an affidavit of inability to defray the expense of return transportation.

(g) *Outpatient services.* (1) Outpatient physical examination, subject to exception defined in paragraph (h)(1) of this section.

(2) Outpatient treatment for service-connected conditions, including adjunct treatment thereof; for veterans under § 17.60 (h) and (i); and for non-service-connected conditions to avoid interruption of training authorized under 38 U.S.C. chapter 31, subject to exceptions defined in paragraph (h) of this section.

(3) Claimants identified in § 17.30(m)(2) are entitled to reimbursement for transportation costs when authorized to report to a Veterans Administration health care facility. (38 U.S.C. 601(6))

(h) *Limitation*—(1) No return transportation will be supplied a claimant or beneficiary under paragraph (g) of this section who has not completed an outpatient service, unless a person executes an affidavit that he or she is unable to defray the expense of such travel.

(2) The transportation at Government expense otherwise authorized by paragraphs (c) and (g) (2) of this section will not be furnished when a determination has been made by a physician that it would be counterproductive to the treatment provided such patient and an entry supporting such a conclusion, signed by such physician, is made in the patient's medical records.

(i) *Advance authority required.* All travel for the foregoing purposes, paragraphs (a) to (g) of this section, must be authorized in advance, except as provided in § 17.101. In emergent hospital admissions or emergent outpatient treatment, such prior authority may be given by telephone or tele-

graph, subject to confirmation in writing by the authorizing employee.

(j) *Accessories of transportation.* The accessories of transportation, meals and lodging en route, pullman accommodations, and accompaniment by an attendant or attendants, may be authorized when determined necessary for the travel.

(k) *Furnishing transportation and other expenses incident thereto.* In furnishing transportation and other expenses incident thereto, as defined, the Veterans Administration may (1) issue requests for transportation, meals, and lodging; or (2) reimburse the claimant, beneficiary or representative, for payment made for such purpose, upon due certification of vouchers submitted therefor, or (3) make mileage allowance. The provisions of § 17.100, 17.101 or 17.102 will be complied with in all instances when transportation costs are claimed. (38 U.S.C. 111)

(l) *Transportation of other than Veterans Administration beneficiaries.* Transportation of beneficiaries of other Federal agencies, incident to medical services rendered upon requests of those agencies, will not be furnished by the Veterans Administration, except that facility vehicles may be used subject to reimbursement, and with the exception of beneficiaries of the Bureau of Old Age and Survivors Insurance in the Philippines on a reimbursable basis under agreement with that agency. Transportation incident to medical services rendered allied beneficiaries under agreement will be subject to reimbursement by the governments concerned.

[21 FR 10387, Dec. 28, 1956, as amended at 23 FR 6502, Aug. 22, 1958; 25 FR 10014, Oct. 20, 1960; 25 FR 10663, Nov. 8, 1960; 28 FR 592, Jan. 23, 1963; 28 FR 5084, May 22, 1963; 29 FR 11183, Aug. 4, 1964; 30 FR 1789, Feb. 9, 1965; 35 FR 7380, May 12, 1970; 35 FR 16920, Nov. 3, 1970; 35 FR 17948, Nov. 21, 1970; 38 FR 14168, May 30, 1973; 39 FR 1845, Jan. 15, 1974; 45 FR 6938, Jan. 31, 1980]

§ 17.101 Approval of unauthorized travel of claimants and beneficiaries.

(a) Payment may be approved for travel performed under § 17.100 (a) through (g) without prior authorization only in those cases where the Veterans Administration determines that there was a need for prompt medical care which was approved and:

(1) The circumstances prevented a request for prior travel authorization, or

(2) Due to Veterans Administration delay or error prior authorization for travel was not given, or

(3) There was a justifiable lack of knowledge on the part of a third party acting for the veteran that a request for prior authorization was necessary.

(b) In other cases, payment may be approved for such travel without prior authorization only upon a finding by the Administrator or designee that failure to secure prior authorization was justified.

[29 FR 11183, Aug. 4, 1964, as amended at 45 FR 6938, Jan. 31, 1980]

§ 17.102 Travel incident to research.

Subject to the provisions of § 17.62(g), travel may be furnished when necessary to provide inpatient or outpatient treatment which is part of an approved Veterans Administration research project.

[35 FR 11470, July 17, 1970]

Prosthetic, Sensory, and Rehabilitative Aids

§ 17.115 Prosthetic and similar appliances.

Artificial limbs, braces, orthopedic shoes, hearing aids, wheelchairs, medical accessories, similar appliances including invalid lifts and therapeutic and rehabilitative devices, and special clothing made necessary by the wearing of such appliances, may be purchased, made or repaired for any veteran upon a determination of feasibility and medical need, provided:

(a) *As part of outpatient care.* The appliances or repairs are a necessary part of outpatient care for which the veteran is eligible under § 17.60 (a) through (d) and (f) through (i) (or a necessary part of outpatient care authorized under § 17.60a) or

(b) *As part of hospital care.* The appliances or repairs are a necessary part of inpatient care for any service-connected disability or any non-service-connected disability, if:

(1) The non-service-connected disability is associated with an aggravating a service-connected disability, or

(2) The non-service-connected disability is one for which hospital admission was authorized, or

(3) The non-service-connected disability is associated with and aggravating a non-service-connected disability for which hospital admission was authorized, or

(4) The non-service-connected disability is one for which treatment may be authorized under the provisions of § 17.48(f), or

(c) *As part of domiciliary care.* The appliances or repairs are necessary for continued domiciliary care, or are necessary to treat a member's service-connected disability, or non-service-connected disability associated with and aggravating a service-connected disability, or

(d) *As part of nursing home care.* The appliances or repairs are a necessary part of nursing home care furnished in facilities under the direct and exclusive jurisdiction of the Veterans Administration.

[32 FR 13816, Oct. 4, 1967, as amended at 33 FR 12315, Aug. 31, 1968; 34 FR 9341, June 13, 1969; 35 FR 17948, Nov. 21, 1970]

§ 17.115a Repairs or replacements necessitated by accidents caused by service-connected disability.

Any artificial limb, truss, brace, hearing aid, spectacles, or similar appliance (not including dental appliances) reasonably necessary to a veteran and belonging to him which was damaged or destroyed by a fall or other accident caused by a service-connected disability for which the veteran is in receipt of, or but for the receipt of retirement pay would be entitled to, disability compensation, may be repaired or replaced.

[32 FR 13816, Oct. 4, 1967]

§ 17.115b Invalid lifts for recipients of aid and attendance allowance or special monthly compensation.

An invalid lift may be furnished if:

(a) The applicant is a veteran who is receiving (1) special monthly compensation (including special monthly compensation based on the need for aid and attendance) under the provisions of 38 U.S.C. 314(1)-(p), or (2) comparable compensation benefits at the rates prescribed under 38 U.S.C. 334, or (3) increased pension based on the need for aid and attendance or a greater compensation benefit rather than aid and attendance pension to which he has been adjudicated to be presently eligible; and

(b) The veteran has loss, or loss of use, of both lower extremities and at least one upper extremity (loss of use may result from paralysis or other impairment to muscle power and includes all cases in which the veteran cannot use his extremities or is medically prohibited from doing so because of a serious disease or disability); and

(c) The veteran has been medically determined incapable of moving himself from his bed to a wheelchair, or from his wheelchair to his bed, without the aid of an attendant, because of the disability involving the use of his extremities; and

(d) An invalid lift would be a feasible means by which the veteran could accomplish the necessary maneuvers between bed and wheelchair, and is medically determined necessary.

[33 FR 12315, Aug. 31, 1968, as amended at 36 FR 3117, Feb. 13, 1971]

§ 17.115c Therapeutic and rehabilitative devices for recipients of aid and attendance allowance or special monthly compensation.

Therapeutic and rehabilitative devices, including medical equipment and supplies (excluding medicines) may be furnished, if:

(a) The applicant is a veteran who is receiving special monthly compensation (including special monthly compensation based on the need for aid and attendance) under the provisions of 38 U.S.C. 314(1)-(p), or (2) comparable compensation benefits at the rates prescribed under 38 U.S.C. 334, or (3) increased pension based on the need for aid and attendance or a greater compensation benefit rather than aid and attendance pension to which he has been adjudicated to be presently eligible, and

(b) The device, equipment or item supplied is medically determined nec-

essary and is of a type or category of devices or supplies determined to be available under this section.

[33 FR 12315, Aug. 31, 1968, as amended at 36 FR 3117, Feb. 18, 1971]

§ 17.115d Special automobile equipment.

Any veteran who acquires a powered lifter or other device of access or egress, or other appliance or therapeutic or rehabilitative device, coincident with obtaining an automobile or adaptive equipment under the provisions of § 3.808 of this chapter (where such appliance or device is not adaptive equipment for purposes of chapter 39, title 38, United States Code) shall be deemed to have complied with this section when a medical determination of need for such is made. The medical determination of need does not have to precede the purchase, and payment or reimbursement is not subject to the provisions of §§ 17.80 through 17.91, since the procurement is not to be considered as unauthorized under these circumstances when the veteran would clearly have been eligible and entitled to the device or equipment had the medical prescription been submitted in advance.

[38 FR 31007, Nov. 9, 1973]

§ 17.116 Training in the use of appliances.

Beneficiaries supplied prosthetic and similar appliances will be additionally entitled to fitting and training in the use of the appliances. Such training will usually be given in Veterans Administration facilities and by Veterans Administration employees, but may be obtained under contract if determined necessary.

[26 FR 5871, June 30, 1961]

§ 17.118 Dog-guides and equipment for blind.

(a) Blind ex-members of the Armed Forces entitled to disability compensation for a service-connected disability may be furnished a trained dog-guide. In addition, they may be furnished necessary travel expense to and from their places of residence to the point where adjustment to the dog-guide is available and meals and lodging during the period of adjustment, provided they are required to be away from their usual places of residence during the period of adjustment.

(b) Mechanical and/or electronic equipment considered necessary as aids to overcoming the handicap of blindness may also be supplied to beneficiaries defined in paragraph (a) of this section.

[26 FR 5872, June 30, 1961]

Automotive Equipment and Driver Training

§ 17.119 Minimum standards of safety and quality for automotive adaptive equipment.

(a) The Chief Medical Director or designee is authorized to develop and establish minimum standards of safety and quality for adaptive equipment provided under 38 U.S.C. Chapter 39.

(b) In the performance of this function, the following considerations will apply:

(1) Minimum standards of safety and quality will be developed and promulgated for basic adaptive equipment specifically designed to facilitate operation and use of standard passenger motor vehicles by persons who have specified types of disablement and for the installation of such equipment.

(2) In those instances where custom-built adaptive equipment is designed and installed to meet the peculiar needs of uniquely disabled persons and where the incidence of probable usage is not such as to justify development of formal standards, such equipment will be inspected and, if in order, approved for use by a qualified designee of the Chief Medical Director.

(3) Adaptive equipment, available to the general public, which is manufactured under standards of safety imposed by a Federal agency having authority to establish the same, shall be deemed to meet required standards for use as adaptive equipment. These include such items as automatic transmissions, power brakes, power steering and other automotive options.

(c) For those items where specific Veterans Administration standards of safety and quality have not as yet been developed, or where such standards are otherwise provided as with custom-designed or factory option

items, authorization of suitable adaptive equipment will not be delayed. Approval of such adaptive equipment, however, shall be subject to the judgment of designated certifying officials that it meets implicit standards of safety and quality adopted by the industry or as later developed by the Veterans Administration.

[40 FR 8819, Mar. 3, 1975]

§ 17.119a Obtaining vehicles for special driver training courses.

The Administrator may obtain by purchase, lease, gift or otherwise, any automobile, motor vehicle or other conveyance deemed necessary to conduct special driver training courses at Veterans Administration health care facilities. The Administrator may sell, assign, transfer or convey any such automobile, vehicle or conveyance to which the Veterans Administration holds title for such price or under such terms deemed appropriate by the Administrator. Any proceeds received from such disposition shall be credited to the applicable Veterans Administration appropriation. (38 U.S.C. 1903(e)(3))

[45 FR 6939, Jan. 31, 1980]

Dental Services

§ 17.120 Authorization of dental examinations.

When a detailed report of dental examination is essential for a determination of eligibility for benefits, dental examinations may be authorized for the following classes of claimants or beneficiaries:

(a) Those having a dental disability adjudicated as incurred or aggravated in active military, naval, or air service or those requiring examination to determine whether the dental disability is service connected.

(b) Those having disability from disease or injury other than dental, adjudicated as incurred or aggravated in active military, naval, or air service but with an associated dental condition that is considered to be aggravating the basic service-connected disorder.

(c) Those for whom a dental examination is ordered as a part of a general physical examination.

(d) Those requiring dental examination during hospital, nursing home, or domiciliary care.

(e) Those held to have suffered dental injury or aggravation of an existing dental injury, as the result of examination, hospitalization, or medical or surgical (including dental) treatment that had been awarded.

(f) Veterans requiring dental examination for determination of necessity of dental treatment and who have been found in need of training authorized under 38 U.S.C. Ch. 31, and for whom an objective has been selected or who are pursuing vocational rehabilitation training are entitled to such dental services as are professionally determined necessary for any of the reasons enumerated in § 17.36(b).

(g) Those for whom a special dental examination is authorized by the Chief Medical Director or the Assistant Chief Medical Director for Dentistry.

(h) Persons defined in § 17.60(d).

[13 FR 7162, Nov. 27, 1948, as amended at 21 FR 10388, Dec. 28, 1956; 23 FR 6503, Aug. 22, 1958; 27 FR 11424, Nov. 20, 1962; 29 FR 1463, Jan. 29, 1964; 30 FR 1789, Feb. 9, 1965; 32 FR 13817, Oct. 4, 1967; 33 FR 5300, Apr. 3, 1968; 35 FR 6586, Apr. 24, 1970]

§ 17.123 Authorization of outpatient dental treatment.

Outpatient dental treatment may be authorized by the Chief, Dental Service, for beneficiaries defined in § 17.60(a) to (d) to the extent prescribed and in accordance with the applicable classification and provisions set forth in this section.

(a) *Class I.* Those having a service-connected compensable dental disability or condition, may be authorized any dental treatment indicated as reasonably necessary to maintain oral health and masticatory function. There is no time limitation for making application for treatment and no restriction as to the number of repeat episodes of treatment.

(b) *Class II.* Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or re-

lease from active service may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected non-compensable dental disability or condition, but only if application for treatment is made within 1 year after discharge or release, except that if a disqualifying discharge or release has been corrected by competent authority application may be made within 1 year after the date of correction or August 14, 1964, whichever is later. When the services rendered on a one-time basis, as provided in this Class II, are found unacceptable within the limitations of good professional standards, such additional services may be afforded as are required to complete professionally acceptable treatment. The foregoing limitations in this Class II as to existence of disability at time of separation from service, time of filing claim, and one-time completion of treatment are not applicable to Classes II (a) and (b).

(c) *Class II (a).* Those having a service-connected noncompensable dental condition or disability adjudicated as resulting from combat wounds or service trauma may be authorized any treatment indicated as reasonably necessary for the correction of such service-connected noncompensable condition or disability.

(d) *Class II (b).* Those having a service-connected noncompensable dental condition or disability and former prisoner of war status may be authorized any treatment indicated as reasonably necessary for the correction of such service-connected dental condition or disability.

(e) *Class III.* Those having a dental condition professionally determined to be aggravating disability from an associated service-connected condition or disability may be authorized dental treatment for only those dental conditions which, in sound professional judgment, are having a direct and material detrimental effect upon the associated basic condition or disability.

(f) *Class V.* A veteran who has been found in need of training authorized under 38 U.S.C. Ch. 31, and for whom an objective has been selected or who is pursuing vocational rehabilitation training may be authorized such dental services as are professionally determined necessary for any of the reasons enumerated in § 17.36(b).

(g) *Class VI.* Those who served in the active military or naval forces during the Spanish-American War, Indian Wars, Philippine Insurrection, or Boxer Rebellion may be authorized any dental treatment indicated as reasonably necessary to maintain oral health and masticatory function. There is no time limit for making application for treatment and no restriction as to the number of repeat episodes of treatment.

[20 FR 9505, Dec. 20, 1955, as amended at 26 FR 11214, Nov. 28, 1961; 27 FR 11424, Nov. 20, 1962; 29 FR 18219, Dec. 23, 1964; 32 FR 13817, Oct. 4, 1967; 33 FR 5300, Apr. 3, 1968; 45 FR 47680, July 16, 1980]

§ 17.123a Eligibility for class II dental treatment without rating action.

When an application has been made for class II dental treatment under § 17.123(b), the applicant may be deemed eligible and dental treatment authorized on a one-time completion basis without rating action if:

(a) The examination to determine the need for dental care has been accomplished within 14 months after date of discharge or release unless delayed through no fault of the veteran, and sound dental judgment warrants a conclusion the condition originated in or was aggravated during service and the condition existed at the time of discharge or release from active service, and

(b) The treatment will not involve replacement of a missing tooth noted at the time of Veterans Administration examination except:

(1) In conjunction with authorized extraction replacement, or

(2) When a determination can be made on the basis of sound professional judgment that a tooth was extracted or lost on active duty.

(c) Individuals whose entire tour of duty consisted of active or inactive duty for training shall not be eligible for treatment under this section.

[37 FR 6847, Apr. 5, 1972]

§ 17.123b Posthospital outpatient dental treatment.

The Chief, Dental Service may authorize outpatient dental care which is reasonably necessary to complete treatment of a nonservice-connected dental condition which was begun while the veteran was receiving Veterans Administration authorized hospital care. (38 U.S.C. 612(b)(5))

[45 FR 6939, Jan. 31, 1980]

§ 17.123c Patient responsibility in making and keeping dental appointments.

Any veteran eligible for dental treatment on a one-time completion basis only and who has not received such treatment within 3 years after filing the application shall be presumed to have abandoned the claim for dental treatment.

[45 FR 6939, Jan. 31, 1980]

§ 17.124 Emergency dental treatment.

When dental treatment is authorized in emergency circumstances before eligibility as a veteran has been established, but after admission to a Veterans Administration hospital or domiciliary on the basis of a tentative eligibility determination, or when emergency dental care is authorized for nonveterans admitted to a Veterans Administration hospital or outpatient clinic as a humanitarian service, the treatment will be restricted to the alleviation of pain or extreme discomfort or the adequate remediation of a dental condition which is determined to be endangering life or health. The rendering of emergency treatment to nonveterans or veterans found ineligible for dental care will not in itself entitle the applicant to further dental treatment.

[35 FR 6586, Apr. 24, 1970]

§ 17.129 Dental services for hospital or nursing home patients and domiciled members.

Persons receiving hospital, nursing home, or domiciliary care pursuant to the provisions of §§ 17.46 and 17.47, will be furnished such dental services as are professionally determined necessary to the patients' or members' overall hospital, nursing home, or domiciliary care.

[30 FR 1790, Feb. 9, 1965]

Sickle Cell Anemia

§ 17.135 Voluntary participation in sickle cell anemia program.

Patients who are otherwise eligible for medical care under existing regulations in 38 CFR Part 17, are potential candidates for participation in a Veterans Administration system-wide program for sickle cell disorders. Participation in this program shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program under Title 38, United States Code.

[39 FR 9542, Mar. 12, 1974]

Autopsies

§ 17.155 Autopsies.

(a) Except as provided in this section, no autopsy will be performed by the Veterans Administration unless there is no known surviving spouse or known next of kin; or without the consent of the surviving spouse or, in a proper case, the next of kin, unless the patient or domiciled person was abandoned by the spouse, if any, or, if no spouse, by the next of kin for a period of not less than 6 months next preceding death. Where no inquiry has been made for or in regard to the decedent for a period of 6 months next preceding his death, he or she shall be deemed to have been abandoned.

(b) If there is no known surviving spouse or known next of kin, or if the decedent shall have been abandoned or if the request is sent and the spouse or, in proper cases, the next of kin fails to reply within the reasonable time stated in such request of the Veterans Administration for permission to perform the autopsy, the Director is hereby authorized to cause an autopsy to be performed if in the Director's discretion he or she concludes that such autopsy is reasonably required for any necessary purpose of the Veterans Administration, including the completion of official records and advancement of medical knowledge.

(c) If it is suspected that death resulted from crime or the cause of death is unknown and if the United States has jurisdiction over the area where the body is found, the Director of the Veterans Administration facility will inform the appropriate District Counsel of the known facts concerning the death. Thereupon the District Counsel will transmit all such information to the United States Attorney for such action as may be deemed appropriate and will inquire whether the United States Attorney objects to an autopsy if otherwise it be appropriate. If the United States Attorney has no objection, the procedure as to autopsy will be the same as if the death had not been reported to him or her.

(d) If the United States does not have exclusive jurisdiction over the area where the body is found the local coroner will be informed. If the local coroner declines to assume jurisdiction the procedure will be the same as is provided in paragraph (c) of this section. If a Federal crime is indicated by the evidence, the procedure of paragraph (c) of this section will also be followed.

(e) The laws of the decedent's domicile are determinative as to whether the spouse or the next of kin is the proper person to grant permission to perform an autopsy and of the question as to the order of preference among such persons. Usually the spouse is first entitled, except in some situations of separation; followed by children, parents, brothers and sisters, etc. When the next of kin as defined by the laws of decedent's domicile consists of a number of persons as children, parents, brothers and sisters, etc., permission to perform an autopsy may be accepted when granted by the person in the appropriate class who assumes the right and duty of burial.

(f) The Director of a Veterans' Administration facility is authorized to cause an autopsy to be performed on a veteran who dies outside of a Veterans' Administration facility while undergoing post-hospital care under the provisions of § 17.60, if the Director determines such autopsy is reasonably required for any necessary purpose of the Veterans' Administration, including the completion of official records and advancement of medical knowledge. Such authority also encompasses the furnishing of transportation of the body at Veterans' Administration expense to the Veterans' Administration facility and return of the body. Consent for the autopsy will be obtained as provided for in paragraph (e) of this section.

[16 FR 5701, June 15, 1951, as amended at 18 FR 2414, Apr. 24, 1953; 24 FR 8330, Oct. 14, 1959; 35 FR 6586, Apr. 24, 1970; 36 FR 23386, Dec. 9, 1971; 45 FR 6939, Jan. 31, 1980]

Veterans Canteen Service

§ 17.160 Organization.

The veterans canteen service, established by Public Law 636, 79th Congress, as amended, will function as a unit within the Department of Medicine and Surgery and will have exclusive responsibility for all its activities. To effectuate the purpose of the act, an organization has been established consisting of the VCS central office located at Washington, D.C., VCS field offices at five locations, and a canteen at each Veterans' Administration hospital, center and domiciliary.

[20 FR 337, Jan. 14, 1955]

§ 17.161 Delegation of authority.

In connection with the Veterans Canteen Service, the Chief Medical Director is hereby delegated authority as follows: (a) To exercise the powers and functions of the Administrator with respect to the maintenance and operation of the veterans canteen service.

(b) To designate the Assistant Chief Medical Director for Administration to administer the overall operation of the Veterans Canteen Service and to designate selected employees of the Veterans Canteen Service to perform the functions described in the enabling statute, 38 U.S.C. ch. 75, so as to effectively maintain and operate the Veterans Canteen Service.

[20 FR 337, Jan. 14, 1955, as amended at 36 FR 23386, Dec. 9, 1971; 45 FR 6939, Jan 31, 1980]

AID TO STATES FOR CARE OF VETERANS IN STATE HOMES

§ 17.165 Recognition of a State home.

A State-operated facility which provides hospital, domiciliary or nursing home care to veterans must be formally recognized by the Administrator as a State home before Federal aid payments can be made for the care of such veterans. Any agency of a State (exclusive of a territory or possession) responsible for the maintenance or administration of a State home may apply for recognition by the Veterans Administration for the purpose of receiving aid for the care of veterans in such State home. A State home may be recognized if: (38 U.S.C. 210, 641)

(a) The State home is a facility which exists primarily for the accommodation of veterans incapable of earning a living and who are in need of domiciliary or nursing home care, and

(b) The majority of such veterans who are nursing home care patients or domiciliary members in the home are veterans who may be included in the computation of the amount of aid payable from the Veterans Administration, and

(c) The personnel, building and other facilities and improvements at the home are devoted primarily to the care of veterans, and

(d) In the case of recognition of State homes having nursing home care facilities the requirements of § 17.166a(b) are met.

[35 FR 3166, Feb. 19, 1970, as amended at 45 FR 6939, Jan. 31, 1980]

§ 17.165a Filing applications.

Applications for Veterans Administration recognition of a State home may be filed with the Chief Medical Director, Veterans Administration. After arranging for an inspection of the State home's facilities for furnishing domiciliary, nursing home or hospital care, the Chief Medical Director will make a recommendation to the Administrator who will notify the State official in writing of a decision.

[35 FR 3166, Feb. 19, 1970, as amended at 45 FR 6939, Jan. 31, 1980]

§ 17.165b Approval of annexes and new facilities.

Separate applications for recognition must be filed for any annex, branch, enlargement, expansion, or relocation of a recognized home which is not on the same or contiguous grounds on which the parent facility is located. When a recognized State home establishes nursing home or hospital care facilities which have not been inspected and approved by the Veterans Administration, a request for separate approval of such facilities must be made. The prohibitions in § 17.165c are also applicable to applications for aid on behalf of any veteran cared for in a new annex, branch or enlarged, expanded or relocated facilities or in new nursing home or hospital facilities during the period prior to notice of recognition or notice of approval of such facilities. (38 U.S.C. 641, 210)

[35 FR 3166, Feb. 19, 1970, as amended at 45 FR 6939, Jan. 31, 1980]

§ 17.165c Aid for period prior to recognition prohibited.

Payment of Federal aid will not be made for domiciliary, nursing home or hospital care for any period prior to the date of notification of recognition of a State home, and aid for domiciliary, nursing home or hospital care furnished any veteran in such home will not be paid for any period prior to the receipt of application for such care on behalf of such veteran except as provided for in § 17.166d. (38 U.S.C. 643)

[45 FR 6939, Jan. 31, 1980]

§ 17.165d Prerequisites for payments to State homes.

No payment or grant may be made to any State home unless the State home meets the standards prescribed by the Administrator. These standards, with respect to nursing home care, shall be no less stringent than those prescribed by the Administrator for community nursing homes. (38 U.S.C. 642(a))

[45 FR 6939, Jan. 31, 1980]

§ 17.166 Aid for domiciliary care.

Aid may be paid to the designated State official for domiciliary care fur-

nished in a recognized State home for any veteran if the veteran is eligible for domiciliary care in a Veterans Administration facility. (38 U.S.C. 641)

[45 FR 6939, Jan. 31, 1980]

§ 17.166a Aid for nursing home care.

Aid may be paid to the designated State official for nursing home care furnished in a recognized State home for any veteran if:

(a) The veteran needs nursing home care and:

(1) Has a service-connected disability for which nursing home care is being provided, or

(2) Has a nonservice-connected disability and is unable to defray the expenses of nursing home care and so states under oath, or

(3) Was discharged or released from active military, naval or air service for disability incurred or aggravated in line of duty, or

(4) Is in receipt of, or but for the receipt of retirement pay would be entitled to receive, disability compensation, and

(b) The quarters in which the nursing home care is provided are in an area clearly designated for such care and not intermingled with those of either hospital patients or domiciliary members. (38 U.S.C. 641, 642(a))

[45 FR 6939, Jan. 31, 1980]

§ 17.166b Aid for hospital care.

Aid may be paid to the designated State official for hospital care furnished in a recognized State home for any veteran if:

(a) The veteran is eligible for hospital care in a Veterans Administration facility, and

(b) The quarters in which the hospital care is carried out are in an area clearly designated for such care, specifically established, staffed and equipped to provide hospital type care, are not intermingled with the quarters of nursing home care patients or domiciliary members, and meet such other minimum standards as the Veterans Administration may prescribe.

[45 FR 6940, Jan. 31, 1980]

§ 17.166c Amount of aid payable.

The amount of aid payable to a recognized State home shall be at the per diem rates of $5.50 for domiciliary care, $10.50 for nursing home care, and $11.50 for hospital care. In no case shall the payments made with respect to any veteran exceed one-half of the cost of the veteran's care in the State home. (38 U.S.C. 641)

[45 FR 6940, Jan. 31, 1980]

§ 17.166d Veterans Administration approval of eligibility required.

Federal aid will be paid only for the care of veterans whose separate eligibility for hospital, domiciliary or nursing home care has been approved by the Veterans Administration. To obtain such approval, State homes will complete a Veterans Administration application form for each veteran for the type of care to be provided and submit it to the Veterans Administration office of jurisdiction for determination of eligibility. Payments shall be made only from the date the Veterans Administration office of jurisdiction receives such application; however, if such request is received by the Veterans Administration office of jurisdiction within 10 days after the beginning of the care of such veteran for which he or she is determined to be eligible, payment shall be made on account of such veteran from the date care began (38 U.S.C. 643).

[35 FR 3167, Feb. 19, 1970, as amended at 45 FR 6940, Jan. 31, 1980]

§ 17.167 Inspection of recognized State homes.

Representatives of the Veterans Administration may inspect any State home at such times as are deemed necessary. Such inspections shall be concerned with the physical plant; records relating to admissions, discharges and occupancy; fiscal records; and all other areas of interest necessary to a determination of compliance with applicable laws and regulations relating to the payment of Federal aid. The authority to inspect carries with it no authority over the management or control of any State home (38 U.S.C. 642).

[30 FR 221, Jan. 8, 1965, as amended at 35 FR 3167, Feb. 19, 1970]

Grants to States for Construction of State Home Facilities

Note: The purpose of the regulations concerning grants to States for construction of State home facilities is to effectuate the provisions of 38 U.S.C. 5031-5037 and to assist the several States to construct new State home facilities for furnishing domiciliary or nursing home care to veterans, and to expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home or hospital care to veterans in State homes.

Source: Sections 17.170 through 17.177, 45 FR 38357, June 9, 1980, unless otherwise noted.

§ 17.170 Definitions.

For the purpose of the regulations concerning grants to States for construction of State home facilities:

(a) The veteran population of each State shall be determined on the basis of the latest figures certified by the Department of Commerce. (38 U.S.C. 5031(a))

(b) The term "State" does not include any possession of the United States. (38 U.S.C. 5031(b))

(c) The term "construction" means the construction of new domiciliary or nursing home buildings, the expansion, remodeling, or alteration of existing buildings for the provision of domiciliary, nursing home, or hospital care in State homes and the provision of initial equipment for any such buildings. The term includes necessary support systems and work performed over and above that required for maintenance and repair. Generally, facilities such as parking lots, landscaping, sidewalks, streets, storm sewers, etc., are excluded except to the extent the work is inextricably involved with new construction or the remodeling, modification or alteration of existing facilities. (38 U.S.C. 5031(c))

(d) The term "cost of construction" means the amount found by the Administrator to be necessary for a construction project, including architect fees, supervision and site inspection services, printing and advertising costs, but excluding land acquisition costs, and the purchase of buildings. (38 U.S.C. 5031(d))

(e) The term "State agency" means that State agency or instrumentality of a State designated by a State as authorized to apply for assistance to construct State home facilities for veterans and thereafter administer such construction program.

§ 17.171 Nursing home beds required for veterans by State.

(a) For purposes of the regulations concerning grants to States for construction of State home facilities, appendix A prescribes the number of beds required to provide adequate nursing home care to veterans residing in each State. Such number shall not exceed two and one-half beds per 1,000 veteran population of such State. (38 U.S.C. 5034(1))

(b) At the time an application is filed by a State for a grant under the regulations concerning grants to States for construction of State home facilities, such State must submit a certified statement listing the total number of State-operated nursing home care beds for veterans together with all other State projects under construction for beds to furnish nursing home care to veterans in such State. (38 U.S.C. 5035(a)(3))

§ 17.172 Scope of grants program.

Subject to the availability of an appropriation, a grant may be made to a State which has submitted, and has had approved by the Administrator, an application for assistance to construct State home facilities as prescribed in §§ 17.170 through 17.177. (38 U.S.C. 5033(a))

§ 17.173 Applications with respect to projects.

(a) A State desiring to receive Federal assistance for construction of State home facilities shall submit to the Administrator a pre-application and an application for such assistance in compliance with the uniform requirements for grant-in-aid to State and local governments prescribed by Office of Management and Budget Circular No. A-102, Revised. The applicant will submit as part of the application or as an attachment thereto:

(1) The amount of the grant requested with respect to such project which may not exceed 65 per centum of the estimated cost of construction of such project.

(2) A description of the site for such project.

(3) Plans and specifications as required by §§ 17.170 through 17.177.

(4) Any comments or recommendations made by appropriate State (and areawide) clearinghouses pursuant to policies outlined in part I, OMB Circular A-95, Revised. (38 U.S.C. 5035(a))

(b) The applicant must furnish reasonable assurance that:

(1) Upon completion of such project the facilities will be used principally to furnish to veterans the level of care for which such application is made, and that not more than 25 per centum of the bed occupancy at any one time will consist of patients who are not receiving such level of care as veterans, and that such level of care will meet the standards prescribed by the Administrator.

(2) Title to such site is or will be vested solely in the applicant, State home, or other agency or instrumentality of the State.

(3) Adequate financial support will be available for the construction of the project, and for its maintenance, repair and operation when complete.

(4) The State will make such reports in such form and containing such information as the Administrator may from time to time reasonably require, and give the Administrator, upon demand, access to the records upon which such information is based.

(5) The rates of pay for laborers and mechanics engaged in construction of the project will be not less than the prevailing local wage rates for similar work as determined in accordance with sections 276a through 276a-5 of title 40, United States Code (known as the Davis-Bacon Act).

(6) Contractors engaged in the construction of the project will be required to comply with the provisions of Executive Order 11246 of September 24, 1965 (30 FR 12319), as amended by Executive Order 11375 of October 13, 1967 (32 FR 14303), and by Executive Order 12086 of October 5, 1978 (43 FR 46501), and rules, regulations, or orders as the Secretary of Labor may issue or adopt.

(7) The project conforms to the applicable requirements for the implementation, maintenance and enforcement of ambient air quality standards adopted pursuant to section 108 of the Clean Air Act, as amended (42 U.S.C. 1857d); that it conforms to the applicable requirements for water pollution prevention and control adopted pursuant to section 106 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1256); that the project will comply with the standards provided under the National Environmental Policy Act of 1969, Pub. L. 91-190, as amended (42 U.S.C. 4321) and Executive orders issued pursuant thereto; that it will comply with Pub. L. 90-480, as amended (42 U.S.C. 4151), which provides that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped; that when applicable, the requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93-234 (42 U.S.C. 4012a), and Executive Order 11988 (42 FR 26951) have been met; that the project will comply with provisions of section 504, Rehabilitation Act of 1973, Pub. L. 93-112, as amended (29 U.S.C. 794) providing for prevention of discrimination against the handicapped in federally assisted programs; and that the project will comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. (38 U.S.C. 5035(a))

(8) Upon completion of a project for new construction or expansion of existing State home facilities, the structures constructed shall be of fire, earthquake, and other natural disaster resistant construction. (38 U.S.C. 5005)

(c) The Administrator will approve any such application if the Administrator finds that there are sufficient funds available to make the grant requested with respect to such project and that:

(1) It has been determined by the Veterans Administration that the ap-

plication meets the requirements of paragraphs (a) and (b) of this section.

(2) The plans and specifications for such projects are in accordance with Veterans Administration standards and regulations.

(3) The construction of such project, together with other projects under construction, and other facilities will not exceed the two and one-half nursing home beds per thousand veteran population limitation prescribed in § 17.171. (38 U.S.C. 5035(b))

(d) The Administrator shall certify approved applications to the Secretary of the Treasury in the amount of the grant requested, but in no event an amount greater than 65 per centum of the estimated cost of construction of the project, and shall designate the appropriation from which it shall be paid. Such certification shall provide for payment to the applicant or, if designated by the applicant, the State home for which such project is being constructed or any other agency or instrumentality of the applicant. Funds paid for the construction of an approved project will be used solely for carrying out such project as so approved. (38 U.S.C. 5035(d)(1))

(e) Any amendment of any application whether or not approved under paragraph (c) of this section will be subject to review and approval pursuant to the regulations concerning grants to States for construction of State home facilities in the same manner as an original application. (38 U.S.C. 5035(e))

§ 17.174 Disallowance of a grant application and notice of a right to hearing.

(a) No application for the construction of State home facilities for furnishing domiciliary, nursing home and hospital care to veterans shall be disapproved until the Administrator has afforded the applicant notice and an opportunity for a hearing. (38 U.S.C. 5035(c))

(b) Whenever a hearing is requested under this section, notice of hearing, procedure for the conduct of such hearing and procedures relating to decisions and notices shall be in accordance with the provisions of §§ 18.9 and 18.10 of this chapter. Failure of an applicant to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to be heard and constitutes consent to the making of a decision on the basis of such information as is available. (38 U.S.C. 210(c), 5035(c))

§ 17.175 Recapture provisions.

If, within 20 years after completion of any project for construction with respect to which a grant has been made under the regulations concerning grants to States for construction of State home facilities (except that the Administrator, may at the time of such grant provide for a shorter period than 20, but not less than 7 years, based on the magnitude of the project and the grant amount involved, in the case of the expansion, remodeling, or alteration of existing facilities), such facilities cease to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home, or hospital care for veterans, the United States shall be entitled to recover from the State which was the recipient of the grant or from the then owner of such construction (but in no event an amount greater than the amount of assistance provided for such construction under these regulations), 65 per centum of the then value of such facilities, as determined by agreement of the parties or by action brought in the district court of the United States for the district in which such facilities are situated. (38 U.S.C. 5036)

§ 17.176 State to retain control of operations.

Neither the Administrator of Veterans Affairs nor any employee of the Veterans Administration shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State home for which facilities are constructed with assistance received under the regulations concerning grants to States for construction of State home facilities except as prescribed in these regulations and § 17.167. (38 U.S.C. 5037)

§ 17.177 General standards of construction and equipment for State home facilities for furnishing domiciliary, nursing home, and hospital care.

The various codes, requirements, recommendations and any amendments or revisions thereof of State and local authorities or technical and professional organizations to the extent and manner in which reference is made in the standards set forth in this section are applicable to grants for construction of State home facilities. The material is either available for inspection at, or further information concerning the source may be obtained from, the Veterans Administration (10), 810 Vermont Avenue, NW., Washington, D.C. 20420.

(a) *Introduction.* (1) The standards set forth in this section are established as required by 38 U.S.C. 5034(2). Such standards constitute general criteria for construction and equipment and shall apply to all projects for which Federal assistance is requested under 38 U.S.C. 5035. They are considered necessary to insure properly planned and well-constructed State home facilities which can be maintained and efficiently operated to furnish domiciliary, nursing home and hospital care.

(2) No attempt has been made in developing these standards to comply with all of the various State and local codes and regulations which must be observed. The standards set forth herein must be followed where they exceed any State or local codes and regulations. Conversely, compliance is required with minimum standards of construction and equipment promulgated by the State agency where such requirements provide a higher standard than the standards contained in this regulation. However, the additional cost, if any, in upgrading over VA standards should be carefully considered and justified. These standards apply to construction of new domiciliary or nursing home buildings, the expansion, remodeling, or alteration of buildings for the provision of domiciliary, nursing, or hospital care in State homes and the provision of initial equipment for any such buildings which are constructed with assistance received under 38 U.S.C. 5035.

(3) The space criteria, functional areas, equipment and construction standards contained in this regulation should be used as a guide. Additional facilities beyond those specified as basic facilities may be included if found to be required by the program but are subject to approval by VA. Substantial deviation from the space, equipment and construction standards included in this regulation should be carefully considered and justified. Except for occasional variances which would require individual justification, failing to meet or exceeding the space criteria by more than 10 percent in the aggregate would be regarded respectively as evidence of inferior construction or as exceeding the boundaries of professional requirements as ordinarily comprehended by such care. VA participation may be subject to proportionate reduction in those projects which exceed the aggregate maximum space criteria by more than 10 per centum or contain functional areas which are not approved.

(4) Preapplication for Federal assistance is required for all construction projects for which the need for Federal funding exceeds $100,000.

(i) Preapplication is required to determine the applicants eligibility, establish communication between the Federal agency and the applicant, and to identify those proposals for which sufficient funds are not available to award the grant requested prior to the applicant incurring significant expenditures in preparing a formal application.

(ii) The preapplication submission shall include schematic plans and space outline in addition to the attachments required by the uniform administrative requirements for Grant-In-Aid to State and local governments prescribed in Office of Management and Budget Circular No. A-102, Revised.

(iii) The preapplication submission shall also include environmental assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(C) of the National Environmental Policy Act of 1969. The Environmental Assessment shall briefly describe the possible beneficial and/or harmful

effect on the following impact categories because of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact.

(A) Transportation,

(B) Air quality,

(C) Noise,

(D) Solid waste,

(E) Utilities,

(F) Geology, (soils/hydrology/flood plains),

(G) Water quality,

(H) Land use,

(I) Vegetation, wildlife, aquatic, ecology/wetlands, etc.,

(J) Economic activities,

(K) Cultural resources,

(L) Aesthetics,

(M) Residential population,

(N) Community services and facilities,

(O) Community plans and projects, and

(P) Other.

(b) *Environmental Impact Statement (EIS).* (1) An EIS will be prepared when construction or remodeling of a State veteran's home will result in a major action significantly affecting the quality of the human environment, and will require VA review and approval prior to approval of a formal application for Federal assistance.

(2) An EIS is a detailed statement discussing the following considerations for each of the Impact Categories:

(i) The environmental impact of the proposed actions.

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented.

(iii) Alternatives to the proposed action.

(iv) The relationship between a local short-term use of man's environment and the maintenance and enhancement of long-term productivity.

(v) Any irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented.

(3) In general an EIS will have the following characteristics:

(i) It will contain a description of the physical and environmental aspects of the proposed action.

(ii) It would be sufficiently descriptive to allow evaluation and appraisal of the favorable and adverse environmental effects of each proposal.

(iii) Its length will be suited to the proposal and the nature of its impact.

(iv) It will be submitted as a separate document and not as an enclosure or an appendix to another document.

(v) It will not be based on ultimate conclusions, but should show consideration of the potential impact of the proposal on the environment.

(vi) It will summarize information and cite sources of overall appraisals with attention to the following:

(A) Include and comment on the views of those opposing the proposal for environmental reasons.

(B) Summarize the views of agencies having environmental responsibilities.

(C) Include a full and objective appraisal of the environmental effects, good and bad, and of available alternatives.

(D) Do not overstate favorable effects.

(E) Discuss regional significance when the environmental impact extends beyond the immediate area.

(F) Include significant relationships between the proposal and other developments, both existing and authorized.

(c) *Site selection.* (1) The site should be reasonably accessible to the center of community activities, and the transportation facilities typical of the area.

(2) Establish whether the site is subject to mineral rights which have not been developed.

(3) The site should not be near insect-breeding areas, noise or other nuisance producing industrial developments, airports, railways or highways producing noise or air pollution, or near a cemetery, or near a natural or potential flood water hazard. In the event that a potential flood hazard site cannot be avoided, then adequate provision must be made to eliminate or minimize the effect of the hazard.

(d) *Boundary and site survey and soil investigation.* (1) The State agency shall provide for a survey and soil investigation of the site and furnish a plat of the site. The purpose of this survey and soil investigation is to obtain data necessary for the develop-

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ment of the site, structural design and utility service connections. It is suggested that this matter be deferred until the architect has been selected in order that he/she may cooperate with the engineer who obtains the data.

(2) The plat shall show:

(i) The outline and location referenced to boundaries, of all existing buildings, streets, alleys (whether public or private), block boundaries, easements, encroachments, the names of streets, railroads and streams, and other information as hereinafter specified. If there is nothing of this character affecting the property, the Surveyor shall so state on the plat.

(ii) The point of beginning, bearings, distances, and interior angles. Closure computations shall be furnished with the plat and error of closure shall not exceed 1 foot for each 10,000 feet of lineal traverse. Boundaries of an unusual nature (curvilinear, off-set, or having other change of direction between corners), shall be referenced with curve data (including measurement chord) and other data sufficient for replacement and such information shall be shown on the map. For boundaries of such nature, coordinates shall be given for all angle and other pertinent points.

(iii) The area of each parcel in acres or in square feet.

(iv) The location of all monuments.

(v) The signature and certification of the Surveyor.

(3) The Site Survey shall show:

(i) The courses and distances of property lines.

(ii) Dimensions and location of any buildings, structures, easements, rights-of-way, or encroachments on the site.

(iii) Details of party walls, or walls and foundations adjacent to the lot lines.

(iv) The position, dimensions, and elevations of all cellars, excavations, wells, back-filled areas, etc., and the elevation of any water therein.

(v) All areas which may be affected by the building operations.

(vi) Detailed information relative to established curb and building lines and street, alley, sidewalk and top and bottom curb grades at or adjacent to the site and the materials of which they are constructed.

(vii) All utility services and the size, characteristics, etc., of these services.

(viii) The location of all piping, mains, sewers, poles, wires, hydrants, manholes, etc., upon, over or under the site or adjacent to the site if within the limits of the survey. Invert elevations of all sanitary and storm lines at manholes and first manhole outside the property line.

(ix) Complete information as to the disposal of sanitary, storm water and subsoil drainage and suitability of subsoil for rainwater or sanitary disposal purposes if dry wells are used.

(x) Official datum upon which elevations are based and a bench mark established on the site.

(xi) Elevations on a grid pattern of not more than 50-foot intervals, except where terrain features require greater detail over the survey area.

(xii) Contours at a maximum 2-foot interval.

(xiii) Elevations of contours, bottoms of excavations, etc.

(xiv) Contemplated date and description of any proposed improvements to approaches or utilities adjacent to the site.

(xv) Delineation of 100-year flood plan.

(xvi) The signature and certification of the Surveyor.

(4) Soil Investigation.

(i) Adequate investigation shall be made to determine the subsoil conditions. The investigation shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions.

(ii) Samples of strata of soil or rock taken in each pit or boring shall be retained in suitable containers. Each sample container shall be identified as to the boring and elevation at which taken and the label initialed by the engineer making the soil investigations.

(iii) The following information shall be covered in the report:

(A) Thickness, consistency, character, and estimated safe bearing value of the various strata encountered in each pit or boring.

(B) Amount and elevation of ground water encountered in each pit or

boring, its probable variation with the seasons and effect on the subsoil.

(C) The elevation of rock, if known, and the probability of encountering quicksand.

(D) Average depth of frost effect below surface of ground.

(E) High and low water levels of nearby bodies of water affecting the ground water level.

(F) Whether the soil contains alkali in sufficient quantities to affect concrete foundations.

(G) The elevations and location of the top of workings relative to the site, if the site is underlaid with mines, or old workings are located in the vicinity.

(H) Recommendations for structural and site design.

(e) *Demolition Plan.* If any existing structures or improvements on the site are to be removed, the buildings or improvements must be designated on the Demolition Plan.

(f) *Site Development Requirements.* (1) *General.* Adequate roads, walks and parking shall be provided within the lot lines to the main entrance.

(2) *Road Widths.* Principal roads and primary service roads shall be 24'0" wide between faces of curbs; secondary service roads shall be 12'0" between faces of curbs.

(3) *Surface and Structure Parking:*

(i) Acceptable dimensions for 90° parking angle are as follows:

	Bay width	Minimum stall width
If cars overhang curbs on both sides	60'0"	8'6"
If cars overhang curbs on one side	62'6"	8'6"
If cars will not overhang either curb or will be parked in the center bumper to bumper	65'0"	8'6"
	4'0"	8'9"
	3'0"	9'0"

(ii) Parking at angles other than 90° may be used only when justifiable.

(iii) Parking facilities shall include provisions to accommodate the physically handicapped. Spaces that are accessible and proximate to the main entrance to the facility shall be set aside and identified for use by individuals with physical disabilities. When placed between two conventional diagonal or head-on parking spaces, single parking spaces for individuals with physical disabilities shall be 13 feet 6 inches wide. If multiple parking spaces are provided for individuals with physical disabilities, each of the parking spaces shall be not less than 9 feet wide; in addition, a clear space 4 feet wide shall be provided between the adjacent parking spaces and also on the outside of the end spaces. Curb ramps (curb cuts) shall be provided between the parking spaces used by individuals with physical disabilities and the access walks to those parking spaces. The curb ramps shall comply with the detailed standards in paragraph (f)(7) of this section.

(4) *Pavement Design.* (i) The pavement section of all roads, service areas and parking areas shall be designed for the maximum anticipated traffic loads and existing soil conditions.

(ii) Service court areas shall be constructed of reinforced portland cement concrete pavement.

(5) *Curbs.* Bituminous roads shall be provided with integral curbs and gutters constructed of portland cement concrete. Free standing curbs may be substituted when the advantage of using them is clearly indicated.

(6) *Curb Radii.* The radii of curbs at road intersections shall not be less than 25'0".

(7) *Curb Ramps (Curb Cuts).* Curb ramps shall be provided to accommodate the physically handicapped and lawnmowers. Curb ramps shall be provided at all intersections of roads and walks. The curb ramps shall be not less than 4 feet wide; they shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The vertical angle between the surface of a curb ramp and the surface of a road or gutter shall not be less than 176 degrees; the transition between the two surfaces shall be smooth. Warning lines that meet the requirements in paragraph (f)(8) of this section shall be provided on a curb ramp at its intersection with a vehicular traffic lane. Curb ramps shall have nonslip surfaces.

(8) *Walks.* Walks shall be of portland cement concrete and shall be at least 6'0" wide (8'0" minimum where abutting parking stalls). Main entrance

walks may be designed in combination with accent and patio areas. Walks shall be designed to accommodate the physically handicapped. Walks shall have a gradient not greater than 3 percent. A ramp shall be substituted for any walk where the gradient of the walk would otherwise exceed 3 percent. The ramps shall comply with the requirements prescribed later in this subparagraph. Walks that have gradients of from 2 to 3 percent shall be provided with level platforms at 200-foot intervals and at intersections with other walks. A walk shall have a level platform that is at least 6 feet by 6 feet, at the entry to a building, or where the direction of traffic flow changes. These platforms shall extend at least 18 inches beyond each side of the doorway for single leaf doors and 12 inches for double leaf doors. Walks and platforms shall have nonslip surfaces. Warning lines of a contrasting color shall be provided across the full width of a walk at its intersection with a vehicular traffic lane. In order to be perceptible to the touch when swept by the cane of a blind person, the warning lines shall be composed of durable nonslip abrasive strips that project approximately $\frac{1}{16}$ inch above the finished surface of the walk. The strips shall be 3 inches wide; a 3-inch clear space shall be left between them. Any walk shall be ramped if the slope exceeds 3 percent. Ramps shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The ramps shall have handrails on both sides; every handrail shall have clearance of not less than $1\frac{1}{2}$ inches between the back of the handrail and the wall or any other vertical surface behind it. Ramps shall not be less than 4 feet wide between curbs; curbs shall be provided on both sides. The curbs shall not be less than 4 inches high and 4 inches wide. A level platform in a ramp shall not be less than the full width of the ramp and not less than 5 feet long. Entrance platforms and ramps shall be provided with protective weather barriers to shield them against hazardous conditions resulting from inclement weather. Ramps and level platforms in ramps shall have nonslip surfaces.

(9) *Steps.* Exterior steps shall not be included in the site development design unless unavoidable.

(10) *Grading.* Minimum lawn slopes shall be 2 percent; critical spot grade elevations shall be shown on the contract drawings. Insofar as practicable, lawn areas shall be designed without steep slopes.

(11) *Landscaping.* (i) Provide open lawn spaces framed by groups of large and small trees.

(ii) Limit the use of shrubs to building and patient use areas and the control of pedestrian traffic.

(iii) Select plants that are indigenous to the area, require little maintenance, and are disease and insect resistant.

(iv) Avoid selection of poisonous or aromatic plants and plants which may be deleterious or irritating to hospitalized patients. Plants having large thorns, or branches and leaves ending in thorns, shall not be used in patient areas.

(v) Provide plant bed outlines having minimum radii of 3 feet in lawn areas to be mowed by tractor and gang mowers. Provide lawn areas of sizes and delineation that can be easily maintained.

(vi) Provide metallic edging or curbs around shrub beds (essential where Bermuda or similar grasses are grown).

(vii) Lawn slopes steeper than 3:1 (e.g., 3 feet horizontally to 1 foot vertically) shall be planted with ground covers.

(12) *Surface Drainage.* Surface grades shall be determined in coordination with the architectural, structural, and mechanical design of buildings and facilities so as to provide proper surface drainage of all areas.

(g) *General Design Considerations.* (1) Nursing homes and domiciliaries should be planned to approximate the home atmosphere as closely as possible. It is desirable that larger bedrooms be provided than are generally provided in general hospitals and that each bed be equitably placed in relation to the windows. Wardrobe and closet space in patients' rooms should be more generous. The use of more open, informal planning, the provision of inviting recreational spaces both in-

doors and out, lounging areas, the use of decoration, color, furnishings, etc., to minimize institutional effect are recommended.

(2) Existing buildings must be adaptable in size, shape and construction to the proposed use and be basically sound to warrant remodeling, modifying or altering. The continuing effect and cumulative cost over the period of the economic life of the property should be considered against the cost of the initial alterations. Deviations from the specific requirements of the standards for economical or functional reasons are permissible provided the essential features and intent of these standards are observed. In no case shall the total cost of remodeling exceed the cost of constructing a new building or facility.

(3) No overhauling or replacement, in kind, of mechanical, electrical, structural and architectural work, or maintenance and repair of any features, in kind, will be considered except as the work is involved inextricably with remodeling, modification or alteration of existing patient/member care areas.

(4) Limited deviation from the fire safety requirements established in these standards may be granted and shall be fully justified by the State agency.

(i) Generally, standards may be waived in projects involving only minor functional changes.

(ii) Where substantial functional changes are involved in nonpatient member care areas, deviation may be allowed if adequate fire separation is provided around the functionally changed area.

(iii) Where substantial functional changes are involved in patient member care areas, deviation will not be permitted.

(h) *Architectural Requirements*—(1) *Finishes.* (i) Floors shall be easily cleanable and shall have wear resistance appropriate for the space served. Floors in kitchens and related spaces shall be waterproof, greaseproof, nonslip and resistant to heavy wear. All floors subject to wetting shall have a nonslip finish. Adjacent dissimilar floor materials shall be flush with each other. Floor materials in anesthetizing areas and rooms used for storage of flammable anesthetics shall comply with NFPA Standard No. 56A. Flame spread requirements shall conform to the limits specified in the section on fire safety herein.

(ii) Walls shall be washable or easily cleaned and smooth. Walls in kitchens and related spaces shall have glazed materials or similar finish and bases shall be waterproof and free from voids. Walls subjected to wetting should also be glazed to a point above the splash or spray line. Wainscots of durable material should be used in patient corridors and other corridors where there is considerable wheeled traffic. Walls in areas used for surgical procedures shall have glazed materials with the base integral with the wall or floor material without voids.

(iii) Ceilings shall be acoustically treated in all areas except mechanical spaces, equipment rooms, etc. The acoustical material shall be washable and moisture proof in dietary, surgical and other areas of high humidity or asepsis.

(2) *Details.* (i) All construction of State home facilities shall provide for the physically handicapped necessary ingress, egress and movement throughout the facility. Such ingress and egress shall provide disabled persons with access and use that is independent, convenient, and substantially equivalent to that provided able-bodied persons.

(ii) Exit facilities shall comply with the requirements of the Life Safety Code, NFPA Standard No. 101.

(iii) Such items as drinking fountains, telephone booths and vending machines shall be so located that they do not restrict the required width of exit corridors.

(iv) All doors to patient-room toilets or patient-room bathrooms shall be equipped with hardware which will permit access in any emergency.

(v) All doors to corridors shall be swinging type except elevator doors. Alcoves and similar spaces which generally do not require doors may be excluded from this requirement.

(vi) Thresholds and expansion joint covers, if used, shall be flush with the floor.

(vii) The location and arrangement of plumbing fixtures with blade handles intended for handwashing purposes shall provide clearance necessary for operation without use of hands.

(viii) Paper towel dispensers shall be provided at all lavatories and sinks used for handwashing.

(ix) If linen and refuse chutes are used, they shall be designed as follows:

(A) Minimum diameter of gravity-type chutes shall be 2'0".

(B) Chutes shall be vented through an aluminum vent having cross sectional area of not less than 10 percent chute area. Vent shall extend through the roof and terminate in a weatherproof aluminum cap.

(x) Dumbwaiters, conveyors, and material handling systems shall open into rooms enclosed by not less than 1-hour fire-resistive construction. The entrance door to such room shall be the same rating as the room construction.

(xi) Protection requirements of X-ray and Gamma-ray installations shall conform to NBS Handbooks, as follows:

(A) X-ray: Handbook 76.

(B) Gamma-ray: Handbook 73.

(xii) Ceiling heights.

(A) Operating rooms, cystoscopic rooms, radiographic rooms, and rooms having ceiling-mounted surgical light fixtures. Not less than 9'0".

(B) Corridors, storage rooms, patient rooms, toilet rooms, and other rooms. Not less than 8'0".

(xiii) The width of stairways shall be not less than 3'8". The width shall be measured between handrails where handrails project more than 3½ inches.

(xiv) Water closet stalls for patient use shall have grab bars on both sides.

(xv) Bathtubs may not be elevated. Grab bars shall be provided at all bathtubs.

(xvi) Showers should be approximately 4 feet square and should have grab bars and curtains. Curbs shall be omitted. If shower doors are used, they shall be made from a shatterproof material.

(xvii) Public toilets shall be provided for both men and women convenient to the lobby area and elsewhere in each separate building to meet needs and to include accessibility for the handicapped in conformance with ANSI A117.1.

(i) *Fire safety criteria*—(1) *Applicable codes*—(i) *Means of egress.* Means of egress (exit access, exit and exit discharge) shall comply with the latest edition of the Life Safety Code of the National Fire Protection Association (NFPA No. 101).

(ii) *Fire protection systems and equipment.* Fire protection systems such as standpipe systems, sprinkler systems, portable fire extinguishers, and fire alarm systems shall conform to the requirements of the latest edition of the appropriate NFPA Standards.

(2) *Construction requirements.* (i) One-story buildings shall be protected noncombustible construction of 1-hour fire-resistive rating meeting or exceeding the defined requirements of the Standard on types of building construction (NFPA No. 220—1975 edition).

(ii) Buildings more than one story in height shall be of fire resistive construction per NFPA No. 101 and NFPA No. 220.

(3) *Interior finish.* (i) Interior finish shall conform to the requirements of the latest edition of the Life Safety Code (NFPA No. 101).

(ii) Window draperies and window curtains shall be made of inherently noncombustible materials or permanently flameproofed materials tested in accordance with NFPA No. 701, Standard Method of Fire Tests for Flame Resistant Textiles and Films. Testing shall incorporate both the small and large scale test procedures of NFPA No. 701.

(iii) Carpet used on floors of exit access corridors and enclosed exits in health care and residential-custodial care occupancies shall satisfactorily withstand a minimum critical radiant flux of greater than or equal to 0.45 watts per square centimeter when tested in accordance with NFPA 253—1978, or flame spread and smoke developed ratings of not greater than 75 and 450 respectively when tested in accordance with NFPA 255—1972. Carpet installed in all rooms or enclosed spaces shall comply with the

provisions of the CPSC FF 1-70 "pill test" standard.

(iv) Insulation, vapor barriers, adhesives, covering and linings for piping, ducts and related equipment shall have flame spread rating not exceeding 25 and a smoke developed rating not higher than 50.

(4) *Additions.* When an addition is to be made to an existing structure, it shall be separated from the existing structure by a fire wall having at least a 2-hour fire resistance rating unless the entire resulting building (addition plus existing structure) conforms to the NFPA No. 101 requirements for new buildings.

(j) *Structural Requirements.* In addition to compliance with the standards set forth herein, all applicable local and State building codes and regulations must be observed. In areas not subject to local or State building codes, the recommendations of any one of the following national codes shall apply insofar as such recommendations are not in conflict with the standards set forth herein.

(1) *National Building Code.* American Insurance Association, Engineering and Safety Service, 85 John Street, New York, New York, 10038.

(2) *Basic Building Code.* Building Officials Conference of America, 1313 East 60th Street, Chicago, Illinois 60637.

(3) *Southern Building Code.* Southern Building Code Congress, Brown-Marx Building, Birmingham, Alabama 35203.

(4) *Uniform Building Code.* International Conference of Building Officials, 5360 S. Workman Road, Whittier, California 90601.

(5) *Code for Safety to Life from Fire in Buildings and Structures.* National Fire Protection Association, 470 Atlantic Ave., Boston, MA 02210.

(k) *Design Data—(1) General.* The buildings and all parts thereof shall be of sufficient strength to support all dead, live and lateral loads without exceeding the working stresses permitted for the materials in the applicable code.

(2) *Special.* Special provisions shall be made for machine or apparatus loads which would cause a greater stress than that produced by the specified minimum live load, with due consideration to vibration or impact resulting from operation of such equipment. Consideration shall be given to structural members and connections of structures which may be subject to hurricanes, tornadoes and earthquakes. Suitable allowance shall be made for future partition changes.

(3) *Live Loads.* The unit live loads shall be taken as the minimum uniformly distributed live loads for the occupancies listed in the above codes. Any loads not specifically listed will be determined by the VA.

(4) *Foundations.* Foundation design (water protection, bearing depths and pressures, minimum penetration depths, wall pressures, compaction specifications, critical slope limits, etc.) shall be based on recommendations determined by a subsurface investigation and must be in accordance with local and/or State codes and recognized standards.

(l) *Site Conditions.* The State agency shall provide current "as-built" drawings showing existing grades, parking, roads, walks, utilities services, and buildings. The building or buildings involved in the proposed project shall be distinctively identified. Any proposed alterations of the existing site shall also be noted. Soil investigation will not be required unless the proposed alterations increase the existing loads on the structure to the extent that new foundations are necessary.

(m) *Mechanical Requirements.* Existing mechanical systems shall be utilized as far as is possible. Where boilers or incinerators are provided, the design and specifications shall comply with the standards relating to control of air pollution.

The heating system, boilers, steam system, ventilation system and air-conditioning system shall be furnished and installed to meet all requirements of the local and State codes and regulations, and the regulations of the National Fire Protection Association and the minimum general standards as set forth. Where there is no local or State boiler code, the recommendations of the American Society of Mechanical Engineers (ASME) shall apply. Gas

and oil fired equipment shall comply with the regulations of applicable codes and published recommended practices.

(n) *Heating*—(1) *Boilers.* Boilers shall have the capacity, when operating at normal rating, to supply the heating system, hot water, and steam operated equipment with one boiler in reserve. All steam and hot water boilers shall be ASME labeled. Fuel storage shall be adequate to the procurement method of the area.

(2) *Boiler Accessories.* Boiler feed pumps, return pumps and circulating pumps shall be furnished in duplicate, each of which has a capacity to carry the full load. Provide blow-off valves, relief valves, nonreturn valves, injectors and fittings to meet the requirements of the city and State codes.

(3) *Temperatures.* The heating system shall maintain a minimum temperature of 70 F. in each habitable room and occupied space. Storerooms, workrooms and similar areas may be maintained at lower design temperatures. In spaces where radiant heat is used, the minimum temperatures specified may be reduced to maintain an equivalent comfort level.

(4) *Covering.* Boilers, smoke breeching and all steam and hot water supply and return piping shall be adequately insulated with noncombustible covering at all economic levels.

(o) *Ventilation.* (1) Rooms which do not have outside windows and which are used by patients or hospital personnel, such as utility rooms, toilets, baths, and food storage rooms, shall be provided with forced or suitable ventilation to permit 10 air changes per hour.

(2) Kitchens and laundries which are located inside the building shall be ventilated by exhaust systems which will discharge the air above the main roof or 50 feet from any window.

(3) The ventilation of these spaces shall comply with the State or local codes, but if no code governs, the air in the workspaces shall be exhausted at least once every six minutes with the greater part of the air being taken from the flatwork ironer and ranges. Air from the laundry sorting area shall be discharged with no recirculation. Rooms used for the storage of combustible anesthetic agents, paints and other highly flammable materials shall be ventilated to the outside air with intake and discharge ducts.

(p) *Air Conditioning.* Buildings may be air conditioned, but the following areas are excluded: Laundry, toilets, showers, locker rooms, and personnel quarters.

(q) *Plumbing and Drainage.* Plumbing systems shall comply with all applicable local and State codes, the requirements of the State Department of Health, and the minimum general standards as set forth herein. Where no State or local codes are in force or where such codes do not cover special hospital equipment, appliances, and water piping, the National Plumbing Code ASA-A40.8, latest edition, shall apply.

(1) *Drains.* Drains from sinks which use chemicals shall be of acid resistant material.

(2) *Standpipe Systems.* Where no local or State codes are in force, the standpipe system shall comply with the requirements of the National Fire Protection Association.

(3) *Sprinkler System.* All new construction regardless of height or structural fire resistance shall be protected throughout with an automatic fire extinguishment system. For remodeling projects provide automatic sprinkler systems in all hazardous areas required by the Life Safety Code, NFPA101 and throughout all existing buildings other than those of fire resistive construction or one-story protected noncombustible construction (see paragraphs (i)(1)(ii) and (i)(2)(i) of this section).

(r) *Kitchen Equipment*—(1) *Codes.* The kitchen equipment shall comply with the applicable local and State laws, codes, regulations and requirements, and with the applicable sanitation standards of Public Health Bulletin No. 37, entitled "Ordinance and Code Regulating Eating and Drinking Establishments, Recommended by the U.S. Public Health Service," and with the minimum general standards set forth herein. Commercial cooking equipment shall be protected in accordance with NFPA No. 96, with a dry chemical extinguishing system.

(i) Adequate cabinets or other facilities shall be provided for the storage or display of food, drink and utensils, and shall be designed as to protect them from contamination by insects, rodents, other vermin, splash, dust and overhead leakage.

(ii) Adequate facilities shall be provided for the washing and bactericidal treatment of utensils used for eating, drinking, and food preparation. Where utensils are to be washed by hand, there shall be provided an adequate sink equipped with heating facilities, to maintain a water temperature of at least 180° F. in the bactericidal treatment compartment throughout the dishwashing period. Where utensils are to be washed by machine, there shall be provided facilities for supplying to the dishwashing machine an adequate supply of rinse water at 180° F. measured at the rinse sprays, throughout the dishwashing period. All tables, shelves, counters, display cases, stoves, hoods and similar equipment shall be so constructed as to be easily cleaned and shall be free of inaccessible spaces providing harborage for vermin. Where there is not sufficient space between equipment and the walls or floor to permit easy cleaning, the equipment shall be set tight against the walls or floor and the joint properly sealed. All utensils and equipment surfaces with which food or drink comes in contact shall be of smooth, not readily corrodible material free of breaks, corrosion, open seams or cracks, chipped places and V-type threads. All surfaces with which food or drink comes in contact shall be easily accessible for inspection and cleaning and shall be self-draining, and shall not contain or be plated with cadmium or lead. All water supply and waste line connections to kitchen equipment shall be installed in compliance with the plumbing requirements of these standards.

(2) *Refrigerators.* Refrigerators shall be provided in all kitchens and other preparation centers where perishable foods will be stored. In the main kitchen, at least two refrigerators shall be provided, one for meats and dairy products, and one for general storage.

(s) *Laundry Codes.* The laundry equipment shall be designed and installed to comply with all local and State codes and laws, the requirements of the State Department of Health, and the minimum general standards as set forth herein. Where laundries are provided, they shall be complete with washers, extractors, tumblers, ironers, and pressers which shall be provided with all safety appliances and sanitary requirements.

(t) *Electrical Requirements*—(1) *Codes and Regulations.* The installation of electrical work and equipment shall comply with the National Electrical Codes (NFPA Nos. 70 and 76A), all local and State codes and laws applicable to electrical installations and the minimum general standards as set forth herein. The regulations of the local utility company shall govern service connections. All materials shall be new and shall equal standards established by the Underwriters' Laboratories, Incorporated. Aluminum busways should not be used as a conducting medium in the electrical distribution system.

(2) *Existing Materials.* Existing materials may be used on an individual project basis only. Materials shall be tested after installation and proven to be satisfactory or replaced.

(3) *Service.* Connections from the service mains, with meter connections and service switches, shall be installed as required by the public service company.

(4) *Feeders and Circuits.* Service feeders to terminate in a distribution switchboard and from this point subfeeders are to be provided for power and lighting panels as necessary for the project. Branch circuits for motor and heating loads are to terminate at the power panel and circuits for lighting and receptacles are to terminate at the lighting panel. Wiring shall be copper and conductor installed in conduit.

(5) *Switchboard and Power Panels.* Circuit breakers and/or fuses with their associated switches are to be provided in the switchboard for the subfeeders; also circuit breakers and/or fuses of proper capacity are to be provided in power and lighting panels. Where motor control centers are to be employed, provide a subfeeder from the main switchboard for the unit.

(6) *Lighting Panels.* Lighting panels shall be provided on each floor for the lighting circuits on that floor. Lighting panels shall be located near the load centers not more than 100 feet from the farthest outlet.

(7) *Lighting Outlets and Switches.* All occupied areas shall be adequately lighted as required by duties performed in the space. Patients' bedrooms shall have as a minimum: general illumination, a night light, and a patient's reading light. The outlets for general illumination and night lights shall be switched at the door. Switches in patients' bedrooms shall be of an approved quiet operating type. It is suggested that lighting levels be not less than those for similar areas recommended in I.E.S. Lighting Handbook.

(8) *Lighting Fixtures.* Lighting fixtures shall be furnished for all lighting outlets. They shall be of a type suitable for the space. Should ceiling lights be used in patients' rooms, they shall have diffuser type shielding. Lighting fixtures in shower areas shall have vapor sealed covers.

(9) *Receptacles (Covenience Outlets).* Grounding type receptacles suitable for the service shall be located where plug-in service is required. Each bedroom shall have not less than two duplex receptacles, with at least one receptacle above the head of each bed. Polarized receptacles for special equipment shall be installed where required. Receptacles shall be installed not more than 50 feet apart in all corridors.

(10) *Emergency Lighting.* Lighting. Emergency lighting shall be provided in accordance with Life Safety Code NFPA No. 101.

(11) *Nurses' Call.* A nurses' call system shall only be required for nursing units, except that an empty conduit system may be installed for domiciliaries where there is likelihood of future conversion to a nursing home. Each patient shall be furnished with an audio-visual or visual nurses' call system which will register a call from the patient with signal light above corridor door and at the nurses' station in hospitals and nursing homes. A duplex unit may be used for two patients. Indicating lights shall be provided at each station where there are more than two beds in a room. A nursing call emergency station shall also be provided in each patient's toilet room and bathroom. Wiring for nurses' call systems shall be installed in conduit.

(12) *Fire Alarms.* Every building shall have an electrically supervised, manually and automatically operated fire alarm system. Pre-signal systems are not permitted. Fire alarm systems shall be in conformance with the National Fire Protection Association Codes and ANSI A117.1 Standards.

(13) *Tests.* Lighting fixtures, all wiring and equipment shall be tested to show that they are free from grounds, shorts, or open circuits, that motors rotate correctly and that all equipment operates properly.

(14) *Emergency Power.* Emergency power shall be provided for equipment vital to patient use, and in accordance with NFPA No. 76A and NFPA No. 70, Article 517.

(15) *Telephone Service.* Telephone service shall be provided in required areas and include service for the handicapped in conformance with ANSI A117.1.

(u) *Elevator and Dumbwaiter Requirements*—(1) *Codes.* The elevator installations shall comply with all local and State codes, American National Standard Safety Code for Elevators (ANSI A17.1 and supplements), the National Electric Codes, and the minimum general standards as set forth herein.

(2) *Number of Cars.* Any State home with patients on one or more floors above the first shall have at least one automatic elevator. State homes with a bed capacity of from 60 to 200 above the first floor shall have not less than two automatic elevators.

(3) *Cab.* Passenger cab platforms shall be not less than 5'8" x 8'8" with a capacity of 4,000 pounds. Cab and shaft doors shall be power operated and shall be not less than 4'0" clear opening.

(4) *Controls.* Elevators, for which operators will not be employed, shall have selective collective automatic operation. Where two elevators are located together, they shall have duplex selective collective automatic operation. The elevator shall be equipped with

automatic self-leveling control which will automatically bring the car platform level with the landing with no load or full load. Multi-voltage or variable voltage machines shall be used where speeds are greater than 150 feet per minute. For speeds above 350 feet per minute, the elevators shall be of the gearless type. Elevators in multistory structures four or more stories in height shall be equipped with an automatic recall system (for fires) per ANSI A19.1 and supplements.

(5) *Dumbwaiters.* Dumbwaiter cabs shall be of steel and not less than 24" x 24" x 36", with one shaft to operate at speeds of 50 feet to 100 feet per minute when carrying a load of 200 pounds. Dumbwaiters serving four floors shall have a maximum speed of 100 feet per minute.

(6) *Tests.* Elevators shall be tested for speed and load, with and without loads, in both directions and shall be given overspeed tests as covered by the "Safety Code for Elevators."

(v) *Requirements for Preparation of Plans, Specifications and Estimates—* (1) *General.* (i) The requirements contained herein have been established for the guidance of the State agency and the architect to provide a standard for preparation of drawings, specifications and estimates.

(ii) Certification shall be submitted that there is no appreciable over-all increase in quantity of sewage discharged to the public sewer, or sewage treatment plant, that there are no appreciable overall changes in the quality of sewage so discharged, and that there are no sewage treatment or control facilities involved. If completion of this project will result in an increase in usage of utilities (water, power, sewage treatment, etc.) evidence of approval of plans by the appropriate governing authority shall be submitted.

(iii) The State agency will find it advantageous to submit its plans to the VA in three stages for recommendations and approvals. However, the State agency may, if it so elects, combine the stages.

(2) *Drawings, specifications, and cost estimates* (i) *First review—Program and Plans.*

(A) *Program.* Give narrative description of existing and planned programs at the facility and how this project affects the operation. If the project involves nursing home care beds, a certification in compliance with § 17.171(b) must accompany the project submission.

(B) *Site Plan.* If a survey has been made, a plat shall be submitted at this time; if not, a description of the site shall be submitted. This shall note the general characteristics of the site, including soil reports and specifications, easements, availability of electricity, water and sewer lines, main roadway approaches, direction of prevailing breezes, orientation, etc., and a map indicating location of the existing and/or new buildings in the geographic area.

(C) *Preliminary Plans (10-25 Percent Drawings).* Indicate the assignment of all spaces, size of areas and rooms and indicate in outline the fixed and movable equipment and furniture. The plans shall be drawn at ⅛" or ¼" scale to clearly present the proposed design. The total floor and room areas shall be computed and shown in the drawings. The drawings shall include a plan of each floor including the basement or ground floor; roof plan; site plan showing roads, parking areas, sidewalks, etc.; demolition work; and sections through the building. If the project involves remodeling/renovation, then current as-built site plan, floor plans and building sections which show the present status of the building and a description of its use and type of construction should be included.

(D) *Space Plan.* List in outline form each room or area, and the square feet proposed. Note special or unusual services or equipment to be included and describe staff requiring office space.

(E) *Outline Specifications.* Provide a general description of the construction, including architectural, electrical and mechanical work (elevators, nurses' call system, air conditioning, heating, lighting power, etc.), as well as interior finishes (floor coverings, acoustical material, wall finishes, etc.).

(F) *Cost Estimates.* Show estimated cost evaluation of the buildings or structures to be constructed in this

project. List the essential cost of construction: contract contingency, fixed equipment not in contract, movable equipment, architects fees, supervision and inspection of the site, etc. If the project involves non-VA participating areas, such costs should be itemized separately.

(G) *Predesign Conferences.* A conference is recommended for all major construction projects primarily to insure that the State agency becomes oriented to VA procedures and requirements plus any technical comments pertaining to the project. The above material should be submitted for VA review about 3 weeks prior to scheduling a predesign conference in VA Central Office.

(ii) *Second Review (Optional)—Working Drawings and Specifications.* All working drawings shall be prepared so that clear and distinct prints may be obtained, accurately dimensioned and include all necessary explanatory notes, schedules and legends. Working drawings shall be complete and adequate for complete VA review and comment. Separate drawings shall be prepared for each of the following types of work: architectural, structural, heating and ventilating, plumbing and electrical. They shall include the following:

(A) *Architectural Drawings.* Site plan showing all new topography, grades, existing buildings, roadways, walks and areas to be seeded. Show all structures and other work to be removed; all floor plans and a roof plan if any new work is involved; all elevations which are affected by the alterations; building sections; demolition drawings. All details to complete the proposed work and finish schedules.

(B) *Equipment Drawings.* Large scale drawings of typical special rooms indicating all fixed equipment and major items of furniture and movable equipment.

(C) *Structural Drawings.* Complete foundation and framing plans and details. General notes to include: governing code, material strengths, live loads, windloads, foundations design values and seismic zone.

(D) *Mechanical Drawings.* Heating and ventilation drawings showing complete systems and details of air conditioning, heating, ventilation and exhaust. Plumbing drawings shall show sizes and elevations of soil and waste systems; sizes of all hot and cold water piping; drainage and vent systems; plumbing fixtures and riser diagrams; medical gases systems. Elevator and dumbwaiter drawings, if required, will show shaft details and installation.

(E) *Electrical Drawings.* Provide separate drawings for lighting and power. Show service entrance and feeders and its characteristics. Include all panel, breaker, switchboard and fixture schedules. Indicate all lighting outlets, receptacles, switches, power outlets and circuits. Show telephone layout, nurses' call systems, fire alarm systems and emergency lighting.

(F) *Specifications.* Provide to supplement the drawings and comply with the following: The specifications shall fully describe, except where indicated and described on the drawings, the materials, workmanship, the kind, finishes and other characteristics of all materials, articles and devices.

(G) *Estimates.* Show in convenient form and detail the total cost of the work to be performed under the contract including provision of fixed equipment shown by the plans and specifications.

(iii) *Third Review—Drawings and Specifications (100 per cent), and Cost Estimates.*

(A) Final working drawings and specifications (to be used for bid purposes) shall be in completed format similar to second review and include any VA requirements from prior technical review(s). Specifications shall include the invitations for bids; cover of title sheet; index; general requirements; form of bid bond; form of agreement; performance and payment bond forms; and sections describing materials and workmanship in detail for each class of work.

(B) Show in convenient form and detail the estimated total cost of the work to be performed under the contract including provision of fixed equipment shown by the plans and specifications, if applicable, to reflect the changes to the approved financial plan. Estimates shall be summarized and totaled under each trade or type of work.

(C) All of the above requirements must be met and approved prior to the State agency advertising for bids.

(iv) *Final Review and Approval—(Bid Tabulations and Cost Estimates).*

(A) The State agency shall submit itemized bid tabulations; assurances, if required; and a Revised Grant Application form reflecting final cost estimates to include all items of cost in the project. If there are non-VA participating area(s), these should be itemized separately.

(B) Following VA approval of bid tabulations and cost estimates, a Memorandum of Agreement executing the grant award will be signed by the Administrator.

(w) *Equipment Requirements*—(1) *General.* Equipment necessary for the functioning of the facility as planned shall be provided in the kind and to the extent required to perform the desired service. The necessary equipment shall be included in the cost of the project and is considered an essential part of the project. In projects of expansion, remodeling or alteration of existing buildings, VA participation in the cost of equipment will be limited to functional areas in which major construction is involved.

(2) *Definition of Equipment.* The term "equipment" as used in these regulations means all items necessary for the functioning of all services of the facility, including such equipment as necessary to provide for the maintenance of accounting and other records, maintenance of buildings and grounds and public waiting rooms. The term "equipment" does not include items of current operating expense such as food, fuel, drugs, dressings, paper, printed forms, soap, and the like.

(3) *Classification of Equipment.* All equipment shall be classified in two groups as indicated below.

(i) *Fixed Equipment (included in construction contract).* Equipment which is permanently affixed to the building or which must be connected to service distribution systems designed and installed during construction for the specific use of the equipment. Included are items such as kitchen and intercommunication equipment, built-in casework, venetian blinds, cubicle curtain rods, etc. The Federal share in the cost of such equipment included in the construction contract will be determined by the VA percentage of participation in the cost of construction.

(ii) *Movable and Fixed Equipment (not included in construction contract).* All items of equipment which are movable and fixed which are purchased through other than a construction contract. Such items include furniture, wheeled equipment, kitchen utensils, draperies, electric clocks, pictures and waste receptacles. The Federal share in the cost of such equipment not included in the construction contract will be determined by the VA percentage of participation in the total project amount.

(4) *Responsibility of State Agency.*

(i) It shall be the responsibility of the State agency to select and purchase all necessary equipment for the complete functioning of services included in the project in accordance with these standards and any further standards prescribed by the State agency. Title to all equipment purchased by the State agency will be vested to the State. Any upgrading of equipment or quantity of items not normally used in the functional areas should be carefully considered and justified.

(ii) It is essential that the equipment shall be properly apportioned and budgeted to the various services of the facility so that unduly expensive or elaborate equipment is not provided for some services of the project necessitating the use of cheap and inadequate equipment for other services.

(iii) Within 90 days after the award of the construction contract and prior to completion of project, the State agency shall submit to the VA for approval a separate, complete itemized list of fixed and movable equipment. Fixed equipment, not included in the construction contract, shall be itemized by category of equipment and show the estimated costs of each category or item and the total costs. The itemized lists of movable equipment shall be submitted in a format corresponding to the rooms or functional areas identified on final drawings. The list shall show quantity and estimated cost of each item. The quantity will be

based on the actual number of units and number of beds in each unit. Generally, the cost of equipment not included in the contract should not exceed eight percent of the cost of basic construction.

(5) *Equipment Review by VA.* VA will review lists of equipment to ascertain medical applicability, quantity and cost of items. The quantity will be determined by the number of nursing units, number of bed areas provided and items required to make constructed areas functional. Medical applicability will be determined by whether such items are normally found or used in the type of medical activity/area planned. The applicant will be given the opportunity to justify any item(s) of equipment not approved by VA.

(x) *Program and Space Criteria.* The following criteria will be applied, as required by the scope of the project, subject to the approval of the VA.

(1) *Domiciliary Program.*

(i) The construction, modernization or renovation of domiciliaries should have the objective of creating and/or enhancing a therapeutic, rehabilitative and restorative atmosphere. This will maximize the possibility of restoring domiciliary veterans to the highest level of noninstitutional living.

(ii) Improved medical facilities are needed to prevent and detect possible hindrances from delaying participation in the therapeutic program.

(iii) Adequate individual privacy should be provided, either through separation of large multi-bed rooms, or rooms or areas of eight or fewer members.

(iv) Multi-bed rooms are based on 110 square feet per bed with a minimum of 3 feet between beds. The criteria are based on accommodations for bed, bedside chair, wardrobe, and writing desk unit.

(v) Full height partitions are desirable when separating bedrooms. Less than full floor to ceiling partitions may be used to achieve adequate ventilation or because of other structural or operational constraints. As a minimum, demipartitions should be at least 5'6" to provide line-of-sight privacy. Each bedroom should have at least one window.

(vi) Support facilities may be decentralized or consolidated in one or more areas to meet overall program requirements. General support facilities are also provided for the entire domiciliary.

(vii) Bathing and toilet facilities.

(A) A minimum of one water closet, lavatory, tub/shower shall be provided for up to every eight members. The number of beds served by private or shared facilities will be deducted from the total number of beds in calculating the number of fixtures required in a congregate facility.

(B) It is desirable to have private, or connecting, toilet-bathrooms in conjunction with member bedrooms. As a minimum, at least one single bedroom should have a private toilet/bathroom.

(C) In congregate facilities, each fixture or tub should be in a separate stall or enclosed for privacy.

(D) Adequate facilities shall be provided for persons using wheelchairs.

(E) Adequate grab bars and handrails shall be provided.

(viii) Information, telephone, switchboard, mailboxes, and control center facilities are generally located adjacent to the main lobby entrance. The information desk serves as a first point of contact, information, and control area for those people entering for admission, visiting, or on business. Included are the information counter or desk and telephone systems.

(ix) Administrator/Director's suite includes all administrative activities required by the Director, Assistant Director, and their immediate staffs (secretaries, analysts, administrative assistants, and/or trainees).

(x) Dietetic Service facilities, for the purpose of these criteria, include dining rooms and all other facilities and space necessary for receiving, storing, processing, serving, and delivering food. These criteria will have as their objective the provision of high quality food service to members and personnel. Such quality service will be maintained through the maintenance of high sanitation standards; the provision of adequate nourishment, attractively served at optimum temperatures, consistently well prepared according to the standards set by the

recipes and served within normal eating hours.

(A) Dining room, food preparation and dishwashing facilities may be planned as separate facilities from Dietetic Service, if necessary.

(B) Contractual food service may be planned, dependent upon cost and prevailing local conditions.

(C) Vending machines may be planned if desired. (450 maximum square feet will be allowed.)

(xi) Rehabilitation medicine, physical, occupational and recreational therapies should be planned to meet program requirements.

(xii) Barber and/or beauty shops, retail sales and canteen may be planned, if required. (120 square feet will be allowed for each.)

(xiii) Janitor's closets should be planned, one for every bed unit and one for every 10,000 to 12,000 square feet of other general administrative and clinical space. The laboratory, kitchen, and other areas which generate undue waste or require special care should have their own janitor's closets. Storage for floor cleaning machines may be provided at either a central location or in several areas of the building.

(xiv) General warehouse for medical and dietary stores may be planned at approximately 15 square feet per bed and should be centrally located.

(2) *Nursing Home Care Program.*

(i) A nursing unit with related facilities will normally be provided for 40 to 60 beds. Where there are limitations in design, fewer beds for the nursing unit are permissible. From the standpoint of staffing, a 50-bed unit is most desirable with a minimum of 30 beds and a maximum of 60-beds per unit.

(ii) Not less than 80 percent of the total beds should be provided in either single or double bedded rooms or a combination of both.

(iii) Patients' rooms shall not have more than four beds. A toilet room, with lavatory and water closet, accessible from adjoining patients' room is recommended. At least two single rooms with private toilet, lavatory and bathtub shall be provided in each nursing unit for the purpose of medical isolation, incompatibility, or personality conflict. All rooms shall include a closet or separate wardrobe for each bed. No patients' rooms shall be located on any floor which is more than 50 percent below grade level. An area or group of rooms (about 10 percent of beds) may be equipped with piped oxygen and vacuum suction.

(iv) Connecting toilets between adjoining bedrooms are recommended. If congregate toilet facilities are planned, separate facilities for both male and female patients should be provided. VA participation in congregate toilet facilities will be based on a maximum of one water closet or urinal and one lavatory per six beds. If a combination of connecting and congregate facilities are provided, the number of beds served by the connecting facilities will be deducted from the total number of beds in calculating the number of fixtures required in the congregate facilities. All patient lavatories and water closets should be designed for wheelchair patients, with grab bars to be provided around water closets. Wheelchair facilities should be designated on drawings.

(v) If private or shared bathrooms are not provided, then separate congregate bathing facilities must be provided to serve male and female patients. VA participation will be limited to one fixture per 9 beds with 30 square feet to be allowed for each bathtub/shower. Grab bars are to be provided. A water closet and lavatory shall be provided in each bathing facility using space criteria for congregate toilets.

(vi) Staff toilet facilities should be provided on each floor of multistory projects and on single level projects when the location and size of the unit precludes the use of facilities provided near the lobby area.

(vii) Food Service facilities to include office for Dietitian, kitchen, dishwashing room, adequate refrigeration, dry storage, receiving area, and garbage facilities as required by the scope of the project.

(viii) Janitors closets (40 sq. ft.), may be provided in each nursing unit, in the dietetic area; and in the administrative area (provided there is no other closet on that floor), with a minimum of one on each floor. The

closet in the dietetic area shall not serve other areas.

(3) *Space Criteria for Domiciliary and Nursing Home Care Units (NSF Allowable per 50-bed unit. *Total allowable per State home).*

(i) Support facilities	Dom	NHC
*Administrators Office	200	200
*Asst. Administrator	150	150
Medical Officer, Director of Nursing or Equivalent	150	150
General Administration (as required)	120	120
Clerical Staff (each)	80	80
Conference Room/Consultation Area	300	500
Lobby/Waiting Area	[1] 3	[1] 3
Public Toilets (male/female)	75	75
Pharmacy	([2])	([2])
Dietetic Service	([3])	([3])
Dining Area	[4] 20	[4] 20
Resident Toilets (male/female)	75	75
Multipurpose Room	[5] 15	[5] 12
Physical Activities	[5] 2.5	[5] 5
(Office if required)	120	120
Occupational Therapy	[5] 2.5	[5] 5
(Office if required)	120	120
Library	300	
Patio/Recreation Area	[5] 10	[5] 10
Building Maintenance Storage	[5] 2.5	[5] 2.5
Resident Storage	[5] 6	[5] 1.5
General Storage	[5] 6	[5] 6

[1] Square feet per bed (150 minimum 600 maximum per facility).
[2] As determined by need.
[3] As required.
[4] Square feet per bed.
[5] Per bed.

General Laundry

Number of beds	Gross building area (sq. ft.)	Service platform (sq. ft.)
25	1000	100
50	1100	100
100	1400	100
150	2100	200
200	2400	200
250	3000	200
300	3700	300

(ii) Bed units	Dom	NHC
One-bed	140	140
Two	220	235
Three	330	360
Four	440	450
Five	550	
Six	660	
Seven	770	
Eight	880	
Lounge Areas		
Resident Lounge w/Storage	[1] 8	[1] 8
Resident Quiet Room	[1] 3	[1] 3
Clean Utility	120	120
Soiled Utility	105	105
Linen Storage	90	150
General Storage	100	100
Nurses Station, Ward Secretary and Medication Room	[1] 25	[1] 5
Exam/Treatment Room	140	140
Waiting Area	50	
Unit Supply and Equipment	50	50
Staff Toilet	30	30
Stretcher/Wheelchair Storage	75	100
Kitchenette	150	120
Housekeeping Closet	40	40
Resident Laundry	125	125

[1] Per bed.

(iii) Bathing and toilet facilities	Dom	NHC
(A) Private or Shared Facilities:		
Wheelchair Facilities	[1] 25	[1] 25
Standard Facilities	[1] 15	[1] 15
(B) Congregate Toilet Facilities:		
Watercloset (Min. one wheelchair)	35	35
Each Additional Toilet Fixture	22	22
(C) Congregate Bathing Facilities:		
First Tub/Shower	80	80
Each Additional Fixture	25	25

[1] Square feet (per fixture).

(4) *Hospital Program.* (i) *General.* The sizes of the various departments will depend upon the requirements of the existing hospital. Some functions allotted separate spaces or rooms in these general standards may be combined provided that the resulting plan will not compromise the best standards of safety and of medical and nursing practices. In other respects, the general standards set forth in this regulation, including area requirements, shall apply.

(A) Facilities for the physically handicapped shall be provided for necessary ingress, egress and movement throughout the building.

(B) The VA will generally accept the design and waive minimum requirements in situations where departments or services are to have minimal renovations and are retained in their present locations. However, if extensive structural changes are being made for expansion or relocation of functional areas, criteria will be used as a basis to determine participation.

(ii) *Nursing Units.* Bedrooms for patients, grouped into distinct nursing units, may be planned for both general medical and surgical patients and for psychiatric patients. A 40-bed unit is

most desirable, however, under exceptional circumstances a range of 30-50 beds may be allowed.

(iii) *Size of Rooms:* Single Rooms—120 square feet; Double Rooms—210 square feet; Four-Bed rooms—370 square feet.

(iv) *Distribution of Beds.* One-bed rooms should be provided for infectious, terminal, disturbed, or offensive patients, and for hospital patients who for other reasons require separation from other patients. Two-bed rooms may be provided to allow flexibility in the accommodations of patients by sex, medical condition, or similar reasons and to provide for patients who would be adversely affected by the confusion resulting from multi-occupancy but who do not require single rooms. Room size should not exceed four beds each.

(v) *General Planning of Bedrooms.*

(A) These criteria are based on accommodations for a bed, bedside table, lavatory, clothing storage and chair.

(B) Multi-bed rooms should be designed to permit no more than two beds side by side parallel to the window wall.

(C) Window sill shall not be higher than 3'0" above the floor and shall be above grade.

(D) Nurses' call systems shall be installed.

(E) A toilet room directly accessible to each patient room is encouraged. A minimum of one water closet, lavatory, and tub/shower should be provided for up to every five patients. Separate lavatories should be provided in each patient room, if feasible.

(F) Piped medical gases, such as oxygen, medical air and vacuum, may be installed into patient bedrooms.

(vi) *Service Facilities Other Than Bedrooms.* Space should be provided for each nursing unit in accordance with the following:

(A) Nurses' Station, including medication preparation, nurses' toilet, charting and physician's dictation area—250 square feet.

(B) Clean Utility Room—120 square feet.

(C) Soiled Utility Room—120 square feet.

(D) Examination Treatment Room—140 square feet.

(E) Day Room-Visitors Area—8 square feet per bed in unit.

(F) Janitors Closet—40 square feet.

(vii) *Other Support Areas.* The following areas may be included in the program, based upon the overall operating plan for the home and hospital.

(A) Physicians Office—120 square feet.

(B) Nurse Supervisors Office—120 square feet.

(C) Clean Linen Room—60 square feet.

(D) Ward Supply Room—40 square feet.

(E) Storage—80 square feet minimum plus 2 square feet per bed in nursing unit.

(F) Sitz Bath.

(G) Nourishment Pantry.

(H) Classrooms and other teaching areas in the nursing unit may be considered if required by hospital program.

(viii) *Patients' Clothing Storage.* Space is included in the criteria for the storage of patients' clothing and small personal effects. If central storage of patients' clothing is preferred, space may be provided for this purpose on the basis of not more than 2 square feet per bed.

(ix) *Other Ancillary Areas/Services.*

(A) In addition to nursing units, provision for clinical and other supportive services and areas may be included, if usually found in a hospital setting, to meet requirements of planned program. Such areas should be justified and subject to VA review and approval.

(B) In view of the limited number of existing hospital facilities in State homes and the voluminous material for hospital space criteria, the State agency may obtain information on criteria and equipment as a guide in planning hospital areas and services. Such material will be furnished by the Assistant Chief Medical Director for Extended Care (182C), Veterans Administration, Washington, D.C. 20420.

(y) *Employees' Facilities.* Separate male and female locker rooms with toilet may be provided for all employees who require a place to change from street clothing into work clothing, or who require a locker for coats, hats, or boots. Six square feet per

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locker may be allowed for each employee. Two water closets and lavatories may be provided for each 15 male or female employees and one for each 15 thereafter. Twenty-five square feet is allowed for each fixture. One hundred square feet may be allowed for each lounge. (Pub. L. 88-450, sec. 4(a) as amended by Pub. L. 94-581, sec. 107(b); Pub. L. 95-62, sec. 3(5); 38 U.S.C. 5034(2)).

APPENDIX A (SEE § 17.171)

State Home Facilities for Furnishing Nursing Home Care

The maximum number of beds, as required by 38 U.S.C. 5034(1), to provide adequate nursing home care to veterans residing in each State is established as follows:

State	Veteran population [1]	No. of beds
Alabama	422,000	1,055
Alaska	40,000	100
Arizona	329,000	823
Arkansas	270,000	675
California	3,343,000	8,358
Colorado	375,000	938
Connecticut	463,000	1,158
Delaware	79,000	198
District of Columbia	101,000	253
Florida	1,318,000	3,295
Georgia	637,000	1,593
Hawaii	94,000	235
Idaho	105,000	263
Illinois	1,545,000	3,863
Indiana	729,000	1,823
Iowa	375,000	938
Kansas	312,000	780
Kentucky	414,000	1,035
Louisiana	453,000	1,133
Maine	153,000	383
Maryland	629,000	1,573
Massachusetts	871,000	2,178
Michigan	1,188,000	2,970
Minnesota	558,000	1,395
Mississippi	244,000	610
Missouri	709,000	1,773
Montana	99,000	248
Nebraska	202,000	505
Nevada	95,000	238
New Hampshire	126,000	315
New Jersey	1,107,000	2,768
New Mexico	137,000	343
New York	2,477,000	6,193
North Carolina	622,000	1,555
North Dakota	61,000	153
Ohio	1,483,000	3,708
Oklahoma	410,000	1,025
Oregon	385,000	963
Pennsylvania	1,747,000	4,368
Rhode Island	154,000	385
South Carolina	335,000	838
South Dakota	75,000	188
Tennessee	541,000	1,353
Texas	1,660,000	4,150
Utah	150,000	375
Vermont	64,000	160
Virginia	661,000	1,653
Washington	612,000	1,530
West Virginia	235,000	588
Wisconsin	590,000	1,475
Wyoming	45,000	113

[1] Estimate as of September 30, 1979.

Source: Reports and Statistics Service, Office of the VA Controller. (Based on last available Bureau of the Census data.)

[45 FR 38368, June 9, 1980]

SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

§ 17.210 Sharing specialized medical resources.

Subject to such terms and conditions as the Chief Medical Director shall prescribe agreements may be entered into for sharing medical resources with other hospitals, including State or local, public or private hospitals or other medical installations having hospital facilities or medical schools or clinics in a medical community with geographical limitations determined by the Chief Medical Director, provided:

(a) The agreement will achieve one of the following purposes:

(1) It will secure the use of a specialized medical resource which otherwise might not be feasibly available by providing for the mutual use or exchange of use of specialized medical resources when such an agreement will obviate the need for a similar resource to be installed or provided at a facility operated by the Veterans' Administration, or

(2) It will secure effective use of Veterans Administration specialized medical resources by providing for the mutual use, or exchange of use, of specialized medical resources in a facility operated by the Veterans Administration, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity; and

(b) The agreement is determined to be in the best interest of the prevailing standards of the Veterans Administration Medical Program; and

(c) The agreement provides for reciprocal reimbursement based on a charge which covers the full cost of the use of specialized medical resources, incidental hospital care or other needed services, supplies used, and normal depreciation and amortization costs of equipment.

(d) Reimbursement for medical care rendered to an individual who is entitled to hospital or medical services (Medicare) under subchapter XVIII of Chapter 7 of title 42, United States Code, and who has no entitlement to medical care from the Veterans Administration will be made to such facility, or if the contract or agreement so provides to the community health care facility which is partly to the agreement in accordance with:

(1) Rates prescribed by the Secretary of Health, Education, and Welfare, after consultation with the Administrator, and

(2) Procedures jointly prescribed by the Secretary and the Administrator to assure reasonable quality of care and service and efficient and economical utilization of resources. (38 U.S.C. 5053)

[32 FR 6841, May 4, 1967, as amended at 35 FR 18198, Nov. 28, 1970; 39 FR 1846, Jan. 15, 1974; 45 FR 6940, Jan. 31, 1980]

§ 17.211 Sharing medical information services.

(a) *Agreements for exchange of information.* Subject to such terms and conditions as the Chief Medical Director shall prescribe, Directors of Veterans Administration hospitals, may enter into agreements with medical schools, Federal, State or local, public or private hospitals, research centers, and individual members of the medical profession, under which medical information and techniques will be freely exchanged and the medical information services of all parties to the agreement will be available for use by any party to the agreement under conditions specified in the agreement.

(b) *Purpose of sharing agreements.* Agreements for the exchange of information shall be used to the maximum extent practicable to create at each Veterans Administration hospital which has entered into such an agreement, an environment of academic medicine which will help the hospital attract and retain highly trained and qualified members of the medical profession.

(c) *Use of electronic equipment.* Recent developments in electronic equipment shall be utilized under information sharing programs to provide a close educational, scientific, and professional link between Veterans Administration hospitals and major medical centers.

(d) *Furnishing information services on a fee basis.* The educational facilities and programs established at Veterans Administration hospitals and the electronic link to medical centers shall be made available for use by medical entities in the surrounding medical community which have not entered into sharing agreements with the Veterans Administration, in order to bring about utilization of all medical information in the surrounding medical community, particularly in remote areas, and to foster and encourage the widest possible cooperation and consultation among all members of the medical profession in the surrounding medical community.

(e) *Establishing fees for information services.* Subject to such terms and conditions as the Chief Medical Director shall prescribe, Directors of Veterans Administration hospitals shall charge for information and educational facilities and services made available under paragraph (d) of this section. The fee may be on an annual or other periodic basis, at rates determined, after appropriate study, to be fair and equitable. The financial status of any user of such services shall be taken into consideration in establishing the amount of the fee to be paid.

[32 FR 6841, May 4, 1967]

§ 17.212 Reports.

The Chief Medical Director or designee will prepare for the Administrator, for submission to the Congress, not more than 60 days after the end of each fiscal year, separate reports on the activities carried out under § 17.210 (Sharing Specialized Medical Resources) and § 17.211 (Sharing Medical Information Services). Each

report shall include (a) an appraisal of the effectiveness of the programs authorized by such regulations and the degree of cooperation from other sources, financial and otherwise, and (b) recommendations for the improvement or more effective administration of such programs. (38 U.S.C. 5057, sec. 203, Public Law 89-785)

[32 FR 6842, May 4, 1967, as amended at 45 FR 6940, Jan. 31, 1980]

§ 17.220 Coordination of programs with Department of Health, Education, and Welfare.

Programs for sharing specialized medical resources or medical information services shall be coordinated to a maximum extent practicable, with programs carried out under part F, title XVI of the Public Health Service Act under the jurisdiction of the Department of Health, Education, and Welfare.

[32 FR 6842, May 4, 1967, as amended at 45 FR 6940, Jan. 31, 1980]

Grants for Exchange of Information

§ 17.260 Scope of the grant program.

The provisions of §§ 17.260 through 17.291 are applicable to grants under 38 U.S.C. 5055 for programs for the exchange of medical information. The purpose of these grants is to assist medical schools, hospitals, and research centers in planning and carrying out agreements for the exchange of medical information, techniques, and information services. The grant funds may be used for the employment of personnel, the construction of facilities, the purchasing of equipment, research, training or demonstration activities when necessary to implement exchange of information agreements.

[33 FR 6011, Apr. 19, 1968]

§ 17.261 The Subcommittee on Academic Affairs.

There is established within the Special Medical Advisory Group authorized under the provisions of 38 U.S.C. 4112(a) a Subcommittee on Academic Affairs, and the Subcommittee shall advise the Administrator, through the Chief Medical Director, in matters pertinent to achieving the objectives of programs for exchange of medical information. The Subcommittee shall review each application for a grant and prepare a written report setting forth recommendations as to the final action to be taken on the application.

[42 FR 54804, Oct. 11, 1977]

§ 17.262 Ex Officio Member of Subcommittee.

The Assistant Chief Medical Director for Academic Affairs shall be an ex officio member of the Subcommittee on Academic Affairs.

[42 FR 54804, Oct. 11, 1977]

§ 17.265 Applicants for grants.

Applicants for grants generally will be persons authorized to represent a medical school, hospital, or research center which has in effect or has tentatively approved an agreement with the Veterans Administration to exchange medical information.

[33 FR 6011, Apr. 19, 1968]

§ 17.266 Applications.

Each application for a grant shall be submitted to the Chief Medical Director on such forms as shall be prescribed and shall include the following evidence, assurances, and supporting documents:

(a) *To specify amount.* Each application shall show the amount of the grant requested, and if the grant is to be for more than one objective, the amounts allocated to each objective (e.g., to training, demonstrations, or construction) shall be specified, and

(b) *To include copy of agreement.* Each application shall be accompanied by a copy of the agreement for the exchange of information or information services which the grant funds applied for will implement, and

(c) *To include descriptions and plans.* Each application shall include a description of the use to which the grant funds will be applied in sufficient detail to show need, purpose, and justifications, and shall be illustrated by financial and budgetary data, and

(d) *To include cost participation information.* Each application shall show the amount of the grant request-

ed to be used for direct expenses by category of direct expenses, the amount requested for indirect expenses related to the direct expenses, any additional amounts which will be applied to the program or planning from other Federal agencies, and from other sources, and amounts or expenses which will be borne by the applicant, and

(e) *To include assurance records will be kept.* Each application shall include sufficient assurances that the applicant shall keep records which fully disclose the amount and disposition of the proceeds of the grant, the total cost of the project or undertaking in connection with which the grant is made or used, the portion of the costs supplied by non-Federal sources, and such other records as will facilitate an effective audit. All such records shall be retained by the applicant (grantee) for a period of 3 years after the submission of the final expenditure report, or if litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved, and

(f) *To include assurance records will be made available.* Each application shall include sufficient assurances the applicant will give the Administrator and the Comptroller General of the United States, or any of their authorized representatives, access to its books, documents, papers, and records which are pertinent to the grant for the purposes of audit and examination, and

(g) *To include assurance progress reports will be made.* Each application shall include sufficient assurances the applicant will furnish the Chief Medical Director periodic progress reports in sufficient detail showing the status of the project, planning, program, or system funded by the grant for which application is made, and the extent to which the stated objectives will have been achieved, and

(h) *To include civil rights assurances.* Each application shall include sufficient assurances that no part of the grant funds will be used either by the grantee or by any contractor or subcontractor to be paid from grant funds for any purpose which is inconsistent with regulations promulgated by the Administrator (Part 18 of this chapter) implementing Title VI of the Civil Rights Act of 1964, or inconsistent with Executive Order 11246 (30 FR 12319) and any implementing regulations the Secretary of Labor may promulgate.

[33 FR 6011, Apr. 19, 1968, as amended at 36 FR 320, Jan. 9, 1971; 42 FR 54804, Oct. 11, 1977]

§ 17.267 Applications for grants for programs which include construction projects.

In addition to the documents and evidence required by § 17.266, any application for a grant for the construction of any facility, structure or system which is part of an exchange of information program shall include the following:

(a) Each application shall include complete descriptions, maps, and surveys of the construction site, and documentary evidence and explanations showing ownership, and

(b) Each application shall include complete plans and specifications for the construction project, and where applicable, sufficient explanations of technical applications so that they may be understood by the layman, and

(c) Each application shall contain assurance that the rates of pay for laborers and mechanics engaged in construction activities will not be less than the prevailing local wage rates for similar work as determined in accordance with the provisions of 40 U.S.C. 276a through 276a-5 (The Davis-Bacon Act).

[33 FR 6012, Apr. 19, 1968]

§ 17.268 Amended or supplemental applications.

An amended application, or an application for a supplemental grant, may be considered either before or after final action has been taken on the original application. Amended applications and applications for supplemental grants shall be subject to the same terms, conditions and requirements necessary for original applications.

[33 FR 6012, Apr. 19, 1968]

§ 17.270 Awards procedures.

Applications for grants for planning or implementing agreements for the exchange of medical information or information facilities shall be reviewed by the Chief Medical Director or designee. If it is determined approval of the grant is warranted, recommendations to that effect shall be made to the Administrator in writing and shall be accompanied by the following:

(a) The recommendation for approval shall be accompanied by the written recommendation of the Subcommittee on Academic Affairs, and

(b) The recommendation for approval shall be accompanied by the written draft of the certificate of award stating all conditions which the grantee is required to agree to under the provisions of § 17.271 and all other conditions to which it has been determined the grant will be subject, and

(c) The recommendation shall include a certification that sufficient appropriated funds are available, and that the application for the grant is sufficient in all details as specified in §§ 17.266 through 17.268.

[33 FR 6012, Apr. 19, 1968, as amended at 42 FR 54805, Oct. 11, 1977]

§ 17.271 Terms and conditions to which awards are subject.

Each certificate of award of a grant for planning or implementing an agreement for the exchange of information or information facilities shall specify that the grant is subject to the following terms and conditions:

(a) *Grants subject to terms of agreement for exchange of information.* Each grant shall be subject to, and the certificate shall incorporate by reference, all terms, conditions, and obligations specified in the agreement or planning protocols which the grant will implement, and

(b) *Grants subject to assurances in application.* Each grant shall be subject to all assurances made by the grantee in its application for the grant as required by §§ 17.266 through 17.267, and

(c) *Grants subject to limitations on use of funds.* Each grant shall be subject to the limitations on the use of grant funds, either for direct or indirect costs, as prescribed in §§ 17.275 through 17.277, and

(d) *Grants subject to special provisions.* Each grant shall be subject to any special terms or conditions which may be warranted by circumstances applicable to individual applications, and specified in the certificate of award.

[33 FR 6012, Apr. 19, 1968]

§ 17.275 Direct costs.

Direct costs to which grant funds may be applied may include in proportion to time and effort spent, but are not limited to, fees and costs directly paid to personnel or for fringe benefits, rent, publications, educational programs, training, research, demonstration activities, or construction carried out in connection with pilot programs for planning or exchange of information.

[33 FR 6012, Apr. 19, 1968]

§ 17.276 Patient care costs to be excluded from direct costs.

Grant funds for planning or implementing agreements for the exchange of medical information shall not be available for the payment of any hospital, medical, or other costs involving the care of patients except to the extent that such costs are determined to be incident to research, training, or demonstration activities carried out in connection with an exchange of information program.

[33 FR 6012, Apr. 19, 1968]

§ 17.277 Indirect costs.

The grantee shall allocate expenditures as between direct and indirect costs according to generally accepted accounting procedures. The amount allocated for indirect costs may be computed on a percentage basis or on the basis of a negotiated lump-sum allowance. In the method of computation used, only indirect costs shall be included which bear a reasonable relationship to the planning or program funded by the grant and shall not exceed a percentage greater than the percentage the total institutional indirect cost is of the total direct salaries and wages paid by the institution.

[33 FR 6012, Apr. 19, 1968]

§ 17.281 Authority to approve applications discretionary.

Notwithstanding any recommendation by the Subcommittee on Academic Affairs of the Special Medical Advisory Group, or any recommendation by the Chief Medical Director or designee, the final determination on any application for a grant rests solely with the Administrator.

[42 FR 54805, Oct. 11, 1977]

§ 17.285 Suspension and termination procedures.

Termination of a grant means the cancellation of Veterans Administration sponsorship, in whole or in part, under an agreement at any time prior to the date of completion. Suspension of a grant is an action by the Veterans Administration which temporarily suspends Veterans Administration sponsorship under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the Veterans Administration.

(a) *Posttermination appeal.* The following procedures are applicable for reviewing postaward disputes which may arise in the administration of or carrying out of the Exchange of Medical Information Grant Program.

(1) *Reviewable decisions.* The Veterans Administration reserves the right to terminate any grant in whole or in part at any time before the date of completion, whenever it determines that the grantee has failed to comply with conditions of the agreement, or otherwise failed to comply with any law, regulation, assurance, term, or condition applicable to the grant.

(2) *Notice.* The Veterans Administration shall promptly notify the grantee in writing of the determination. The notice shall set forth the reason for the determination in sufficient detail to enable the grantee to respond, and shall inform the grantee of his or her opportunity for review by the Assistant Chief Medical Director as provided in this section.

(3) *Request for appeal.* A grantee with respect to whom a determination described in paragraph (a)(1) of this section has been made, and who desires review, may file with the Assistant Chief Medical Director for Academic Affairs an application for review of such determination. The grantee's application for review must be postmarked no later than 30 days after the postmarked date of notification provided pursuant to paragraph (a)(2) of this section.

(4) *Contents of request.* The application for review must clearly identify the question or questions in dispute, contain a full statement of the grantee's position in respect to such question or questions, and provide pertinent facts and reasons in support of his or her position. The Assistant Chief Medical Director for Academic Affairs will promptly send a copy of the grantee's application to the Veterans Administration official responsible for the determination which is to be reviewed.

(5) *Effect of submission.* When an application for review has been filed no action may be taken by the Veterans Administration pursuant to such determination until such application has been disposed of, except that the filing of the application shall not affect the authority which the constituent agency may have to suspend the system under a grant during proceedings under this section or otherwise to withhold or defer payments under the grant.

(6) *Consideration of request.* When an application for review has been filed with the Assistant Chief Medical Director for Academic Affairs, and it has been determined that the application meets the requirements stated in this paragraph, all background material of the issues shall be reviewed. If the application does not meet the requirements, the grantee shall be notified of the deficiencies.

(7) *Presentation of case.* If the Assistant Chief Medical Director for Academic Affairs believes there is no dispute as to material fact, the resolution of which would be materially assisted by oral testimony, both parties shall be notified of the issues to be considered, and take steps to afford both parties the opportunity for presenting their cases, at the option of the Assistant Chief Medical Director for Academic Affairs, in whole or in part in writing, or in an informal conference.

Where it is concluded that oral testimony is required to resolve a dispute over a material fact, both parties shall be afforded an opportunity to present and cross-examine witnesses at a hearing.

(8) *Decision.* After both parties have presented their cases, the Assistant Chief Medical Director for Academic Affairs shall prepare an initial written decision which shall include findings of fact and conclusions based thereon. Copies of the decision shall be mailed promptly to each of the parties together with a notice informing them of their right to appeal the decision of the Administrator, or to the officer or employee to whom the Administrator has delegated such authority, by submitting written comments thereon within a specified reasonable time.

(9) *Final decision.* Upon filing comments with the Administrator, or designated officer or employee, the review of the initial decision shall be conducted on the basis of the decision, the hearing record, if any, and written comments submitted by both parties. The decision shall be final.

(10) *Participation by a party.* Either party may participate in person, or by counsel pursuant to the procedure set forth in this section.

(b) *Termination for convenience.* The Veterans Administration or the grantee may terminate a grant in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Veterans Administration shall allow full credit to the grantee for the Veterans Administration share of the noncancellable obligations, properly incurred by the grantee prior to termination.

(c) *Suspension procedures.* When a grantee has failed to comply with the terms of the grant agreement and conditions or standards, the Veterans Administration may, on reasonable notice to the grantee, suspend the grant and withhold further payments, prohibit the grantee from incurring additional obligations of funds, pending corrective action by the grantee, or make a decision to terminate as described in paragraph (a) of this section. The Veterans Administration shall allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of the applicable Federal cost principles.

[42 FR 54805, Oct. 11, 1977]

§ 17.287 Recoupments and releases.

In any case where the Veterans Administration's or a grantee's obligations under an exchange of information agreement implemented by grant funds are terminated, or where grant-financed equipment or facilities cease to be used for the purposes for which grant support was given, or when grant-financed property is transferred, the grantee shall return the proportionate value of such equipment or facility as was financed by the grant. When it is determined the Veterans Administration's equitable interest is greater that proportionate value, then a claim in such greater amount shall be asserted. If it is determined an amount less than proportionate value or less than the Veterans Administration's equitable interest should be recouped, or that the Veterans Administration should execute any releases, then a proposal concerning such a settlement or releases complete with explanations and justifications shall be submitted to the Assistant Chief Medical Director for Academic Affairs for a final determination.

[42 FR 54805, Oct. 11, 1977]

§ 17.290 Payments.

Payments of grant funds are made to grantees through a letter-of-credit, an advance by Treasury check, or a reimbursement by Treasury check, as appropriate. A letter-of-credit is an instrument certified by an authorized official of the Veterans Administration which authorizes the grantee to draw funds when needed from the

Treasury, through a Federal Reserve bank and the grantee's commercial bank and shall be used by the Veterans Administration where all the following conditions exist: (a) When there is or will be a continuing relationship between the grantee and the Veterans Administration for at least a 12-month period and the total amount of advance payments expected to be received within that period is $250,000, or more; (b) when the grantee has established or demonstrated the willingness and ability to maintain procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the grantee; and (c) when the grantee's financial management meets the standards for fund control and accountability. An advance by Treasury check is a payment made to a grantee upon its request before outlays are made by the grantee, or through use of predetermined payment schedules and shall be used by the Veterans Administration when the grantee meets all of the above requirements of this section except that advances will be less than $250,000, or for a period less than 12 months. Reimbursement by Treasury check is a payment made to a grantee upon request for reimbursement from the grantee and shall be the preferred method when the grantee does not meet the requirements of paragraphs (b) and (c) of this section. This method may be used on any construction agreement, or if the major portion of the program is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the program. When the reimbursement method is used, the Veterans Administration shall make payment within 30 days after receipt of the billing, unless billing is improper. Unless otherwise required by law, payments shall not be withheld for proper charges at any time during the grant period unless a grantee has failed to comply with the program objectives, award conditions, or Federal reporting requirements; or the grantee is indebted.

[42 FR 54806, Oct. 11, 1977]

§ 17.291 Copyrights and patents.

If a grant-supported program results in copyrightable material or patentable inventions or discoveries, the United States Government shall have the right to use such publications or inventions on a royalty-free basis.

[35 FR 6013, Apr. 19, 1968]

Grants to the Republic of the Philippines

§ 17.350 The program of assistance to the Philippines.

The provisions of this section through § 17.370 are applicable to grants to the Republic of the Philippines and to furnishing medical services under §§ 17.37 through 17.42, and implement the "Agreement between the Government of the United States of America and the Government of the Republic of the Philippines on the Use of the Veterans Memorial Hospital and the Provision of Inpatient and Outpatient Medical Care and Treatment of Veterans by the Government of the Philippines and Furnishing of Grants-in-Aid Thereof by the Government of the United States of America," dated April 25, 1967 (Treaties and Other International Acts Series 6248), and a subsidiary agreement of the same date, both of which were entered into pursuant to the provisions of 38 U.S.C. 631-634. All such implementing regulations have been approved by the Director of the Office of Management and Budget.

[33 FR 5300, Apr. 3, 1968, as amended at 45 FR 47680, July 16, 1980]

§ 17.351 Grants for the replacement and upgrading of equipment at Veterans Memorial Hospital.

Grants to assist the Republic of the Philippines in the replacement and upgrading of equipment and in rehabilitating the physical plant and facilities of the Veterans Memorial Hospital, which the Administrator may make under the authority cited in § 17.350, shall be subject to such terms and conditions as the Administrator may prescribe. Among such terms and conditions to which the grants will be subject, will be advance approval by

the U.S. Veterans Administration of equipment purchases, maintenance or repair projects. The awarding of such grants is further subject to the limitations on available funds in § 17.352.

[33 FR 5300, Apr. 3, 1968, as amended at 45 FR 47680, July 16, 1980]

§ 17.352 Amounts and use of grant funds for the replacement and upgrading of equipment.

Grants awarded under § 17.351 shall not exceed the amounts provided by the appropriation acts of the Congress of the United States for the purpose. Funds appropriated for the upgrading and replacement of equipment at the Veterans Memorial Hospital, or for rehabilitating its equipment, shall remain available in consecutive fiscal years until expended, but in no event shall exceed the amount of $50,000 per year. It is not intended that such funds will be utilized to expand the hospital facilities. Upgrading of equipment, however, would permit purchase of new and additional equipment not now possessed by the hospital.

[39 FR 1846, Jan. 15, 1974]

§ 17.353 Grants for education and training.

Grants to the Republic of the Philippines to assist the Veterans Memorial Hospital in medical education and training of health service personnel, which the Administrator may make under the authority cited in § 17.350, shall be subject to such terms and conditions as the Administrator shall prescribe. Among such terms and conditions to which the grants will be subject will be United States Veterans Administration approval of all education and training programs to be supported by grant funds. Grants under this section shall not exceed the amounts provided by the appropriation acts of the Congress of the United States for such purpose and in no event shall exceed $50,000 for each fiscal year during the 5 years beginning with fiscal year 1973.

[39 FR 1846, Jan. 15, 1974, as amended at 45 FR 47680, July 16, 1980]

§ 17.355 Awards procedures.

All applications for grants to the Republic of the Philippines under the provisions of §§ 17.351 or 17.353 shall be submitted to the Chief Medical Director or a designee for consideration. (38 U.S.C. 632).

(38 U.S.C. 201(c))

[45 FR 47680, July 16, 1980]

§ 17.360 Payments for medical care in lieu of grants.

Subject to the provisions of §§ 17.361 through 17.370, payments in lieu of grants for reimbursement of medical expenses, may be made for hospital and nursing home care, outpatient care, and transportation furnished Commonwealth Army veterans or new Philippine Scout veterans in connection with treatment at the Veterans Memorial Hospital (or at a facility under contract or subcontract) authorized under § 17.37(b), 17.38 (a) or (b), 17.40, or 17.41. Costs for outpatient care shall be segregated from inpatient care costs. Hospital and nursing home costs shall be computed on the basis of per diem costs as agreed upon for each fiscal year by the Government of the United States and the Government of the Republic of the Philippines, and the expenses for services, supplies, and other items to be included in the per diem rate shall be as agreed upon by the two Governments.

[39 FR 1846, Jan. 15, 1974]

§ 17.361 Limitations on payments for medical and nursing home care.

Payments in lieu of grants under § 17.360 shall not exceed the amounts provided by the appropriation act of the Congress of the United States for such purpose, and in no event shall exceed $2 million for each fiscal year during the 5 years beginning with fiscal year 1974. This sum shall include an amount not to exceed $250,000 for any one such fiscal year for nursing home care. In determining these limitations the following costs shall:

(a) Exclude all medical and nursing home care and transportation costs incurred in connection with authorized treatment at the Veterans Memorial

Hospital of United States veterans, and

(b) Include all medical care and transportation costs incurred in connection with outpatient treatment authorized under § 17.40 for Commonwealth Army or new Philippine Scout veterans.

[39 FR 1846, Jan. 15, 1974]

§ 17.362 Acceptance of medical supplies as payment.

Upon request of the Government of the Republic of the Philippines, payment for medical and nursing home services for which payment may be authorized under § 17.360, may consist in whole or in part, of available medicines, medical supplies, or equipment furnished by the Veterans Administration to the Veterans Memorial Hospital at valuations determined by the Administrator. Such valuations shall not be less than the cost of the items and shall include the cost of transportation, arrastre, brokerage, shipping and handling charges.

[39 FR 1846, Jan. 15, 1974]

§ 17.363 Length of stay.

In computing the length of stay for which payment will be made, the day of admission will be counted, but not the day of discharge, death, or transfer. When a veteran for whom hospitalization has been authorized in Veterans Memorial Hospital or a contract facility is absent from the hospital for a period longer than 24 hours, no payment will be made for hospital care during his absence.

[33 FR 5300, Apr. 3, 1968]

§ 17.364 Eligibility determinations.

Determinations of legal eligibility and medical need for hospitalization of Commonwealth Army veterans and new Philippine Scout veterans for treatment rests exclusively with the U.S. Veterans Administration. Determinations as to various factors upon which eligibility may depend shall be made as follows:

(a) *Determinations of service connection.* For the purpose of meeting any requirement in §§ 17.37 through 17.41 for service-connected disability, the U.S. Veterans Administration shall determine that under laws it administers the disability in question was incurred in or aggravated by service, and

(b) *Determinations of valid service.* For the purpose of determining the necessary prerequisite service, determinations by the Department of Defense of the United States as to military service shall be accepted. This includes determinations involving questions as to whether guerilla service may be recognized. In those cases in which the U.S. Veterans Administration shall have information which it deems reliable and in conflict with the information upon which the Department of Defense determination was made, the conflicting information shall be referred to the Department of Defense for reconsideration and redetermination. Such determinations and redeterminations as to military service shall be conclusive.

[33 FR 5300, Apr. 3, 1968]

§ 17.365 Admission priorities.

In determining admissions or transfers of eligible Commonwealth Army veterans, new Philippine Scout veterans and United States veterans to Veterans Memorial Hospital, and in determining discharges, the following priorities shall be observed:

(a) First priority shall be given to the admission and retention of eligible Commonwealth Army veterans and new Philippine Scouts in need of care for service-connected disability or non-service-connected disability associated with and held to be aggravating a service-connected disability, and

(b) Second priority shall be given to the admission and retention of United States veterans who are in need of treatment for service-connected disabilities or non-service-connected disabilities associated with and held to be aggravating a service-connected disability, and

(c) Third priority shall be given the admission or retention of Commonwealth Army veterans, new Philippine Scout veterans and United States veterans in need of hospital care for non-service-connected disabilities.

[39 FR 1846, Jan. 15, 1974]

§ 17.366 Authorization of emergency admissions.

The Secretary of National Defense of the Republic of the Philippines shall make determinations as to whether any patient should be admitted in emergency circumstances before the U.S. Veterans Administration has made a legal determination of eligibility, except that liability for payment will not accrue to the United States until such eligibility determination has been made. Eligibility determinations will be given effect retroactively to the date of admission when the U.S. Veterans Administration has been notified by telephone, telegram, letter, or other communication of the emergency admission within 72 hours of the hour of admission. The Clinic Director of the VA Regional Office, Manila, may make an exception to the 72-hour limitation when he determines delay in notification was fully justified. When any authorization cannot be made effective retroactively to the date of admission, it shall be effective from the date of receipt of notification.

[33 FR 5301, Apr. 3, 1968]

§ 17.367 Republic of the Philippines to print forms.

The Secretary of National Defense of the Republic of the Philippines will, with the concurrence of the Administrator, print all forms for applications for hospitalization, forms for physical examination reports, forms for billings for services rendered, and such other forms as may be necessary and incident to the efficient execution of the program governed by the provisions of §§ 17.37 through 17.42 and 17.350 through 17.370. The forms will be used whenever applicable in the general operation of the program.

[33 FR 5301, Apr. 3, 1968]

§ 17.368 Use of subcontract or contract facilities.

The Secretary of National Defense of the Republic of the Philippines or his designee may, with the concurrence of the United States Veterans Administration, subcontract the hospital care and treatment of any Commonwealth Army veteran suffering from leprosy which is service connected or which is associated with and held to be aggravating a service-connected disability. Hospital care in the Republic of the Philippines of Commonwealth Army veterans in need of care for other service-connected disabilities shall not be limited to the Veterans Memorial Hospital, but the facilities at the Veterans Memorial Hospital shall be used to the maximum extent feasible.

[33 FR 5301, Apr. 3, 1968]

§ 17.369 Inspections.

The U.S. Veterans Administration, through authorized representatives, has the right under the agreements cited in § 17.350, to inspect the Veterans Memorial Hospital, its premises and all appurtenances and records to determine completeness and correctness of such records, and to determine according to the provisions of the cited agreements whether standards maintained conform to the necessary requirements.

[33 FR 5301, Apr. 3, 1968]

§ 17.370 Termination of payments.

Payments may be terminated if the U.S. Veterans Administration determines the Veterans Memorial Hospital has not replaced and upgraded as needed equipment during the period in which the agreements cited in § 17.50 are in effect or has not rehabilitated the existing physical plant and facilities to place the hospital on a sound and effective operating basis, or has not maintained the hospital in a well-equipped and effective operating condition. Payments, however, will not be stopped unless the Veterans Memorial Hospital has been given at least 60 days advance written notice of intent to stop payments.

[33 FR 5301, Apr. 3, 1968]

GRANTS AND ASSISTANCE FOR DEVELOPMENT, EXPANSION AND IMPROVEMENT OF MEDICAL AND ALLIED HEALTH EDUCATION

§ 17.400 Purpose and scope of the program.

The provisions of §§ 17.400 through 17.416 are applicable to a program of grants and other forms of assistance under the "Veterans' Administration Medical School Assistance and Health Manpower Training Act of 1972" as amended by the Veterans Omnibus Health Care Act of 1976 (Pub. L. 94-581), the Veterans' Administration Programs Extension Act of 1978 (Pub. L. 95-520), the Veterans Health Programs Extension and Improvement Act of 1979 (Pub. L. 96-151), and the Veterans' Administration Health Care Amendments of 1980 (Pub. L. 96-330) (38 U.S.C. Chapter 82). This Act authorizes the Administrator of Veterans' Affairs to provide certain assistance in the establishment of new State medical schools and the improvement of existing medical schools affiliated with the Veterans' Administration; to develop cooperative arrangements between institutions of higher education, hospitals, and other nonprofit health service institutions affiliated with the Veterans' Administration to coordinate, improve, and expand the training of professional and allied health and paramedical personnel; to develop and evaluate new health careers, interdisciplinary approaches and career advancement opportunities; to improve and expand allied and other health manpower utilization; and for other purposes.

[46 FR 33522, June 30, 1981]

§ 17.401 Administration.

Programs of grants and other forms of assistance which are established under the provisions of 38 U.S.C. Chapter 82 will be administered in accordance with §§ 17.400 through 17.416 and with program guides which will be issued and updated periodically by the Administrator.

[38 FR 26190, Sept. 19, 1973]

§ 17.402 Definitions.

For the purpose of §§ 17.400 through 17.416 the term:

(a) The "Administrator" means the Administrator of Veterans Affairs.

(b) The "Special Medical Advisory Group" means the group of representatives of medical, dental and allied professions, appointed and functioning under 38 U.S.C. 4112(a).

(c) "Program period" means the time for which the grant assistance has been approved as specified in the agreement or grant document.

(d) An "award period" means the interval of time into which an approved activity is divided for budgetary purposes, as specified in the agreement or grant document.

(e) "Extension, expansion, alteration, remodeling, improvement, or repair" as used in 38 U.S.C. 5073 and 5096 relate to existing buildings and structures. None of these is synonymous with "construction" as used in 38 U.S.C. 5083(a) which relates to the construction of new free-standing structures. Both provisions are limited to facilities and property under the control and jurisdiction of the Administrator.

(f) For the purposes of 38 U.S.C. 5071-5074: (1) "Colleges" means nonprofit institutions of higher learning, which are primarily supported by the State, and are authorized to offer, and are offering a formal program of college level studies leading to the baccalaureate degree and are accredited or approved by an accrediting body or bodies recognized for such purposes by the Secretary of the Department of Education.

(2) "Universities" means educational institutions, which are primarily supported by the State; which are comprised of one or more undergraduate colleges or professional schools, each appropriately accredited or approved by an accrediting body or bodies recognized for such purposes by the Secretary of the Department of Education; and which are authorized to confer degrees.

(3) "Medical school" means a nonprofit school of medicine or osteopathy which provides a complete course of study which culminates in a degree

of doctor of medicine or doctor or osteopathy; and with regard to which there has been a finding made of reasonable assurance that such a school can proceed to full accreditation as determined by the body or bodies recognized for such purposes by the Secretary of the Department of Education.

(4) "Faculty" means those individuals who have as their principal duties the instruction of students in the new medical school or the administration of the academic program of such a school.

(g) For the purposes of 38 U.S.C. 5081-5083: (1) "Medical school" means a nonprofit school of medicine or osteopathy which provides a course of study of not less than 2 years, which forms a part or whole of the necessary requirements leading to a degree of doctor of medicine or doctor of osteopathy, and which has been reviewed and accredited for its stage of development by an appropriate accrediting agency recognized for such purpose by the Secretary of the Department of Education.

(2) "Full-time student" means a student who is enrolled or is expected to be enrolled in a medical school on a full-time basis as determined by the medical school and is pursuing a course of study leading to the degree of doctor of medicine or doctor of osteopathy.

(h) For the purposes of 38 U.S.C. 5091-5093, an "eligible institution" means any nonprofit educational facility or other public or nonprofit institution, including universities, colleges, junior colleges, community colleges, schools of allied health professions, State and local systems of education, hospitals, and other nonprofit health manpower institutions for the training or education of allied health or other health personnel affiliated with the Veterans Administration for the conduct of or the providing of guidance for education and training programs for health manpower.

[38 FR 26190, Sept. 19, 1973, as amended at 46 FR 33522, June 30, 1981]

§ 17.403 Eligibility.

(a) To be eligible to receive assistance under 38 U.S.C. 5071-5074, the applicant must:

(1) Be a college or university as defined in § 17.402(f) (1) and (2);

(2) Be located within a reasonable distance of an existing Veterans Administration medical facility; and

(3) Furnish the Administrator with such evidence as may be required that the college or university has prepared and presented a plan for the proposed new school of medicine or osteopathy; and that in a letter dated not earlier than October 24, 1972, has received reasonable assurance of accreditation of the new school as defined in § 17.402(f)(3).

(b) To be eligible to receive assistance under 38 U.S.C. 5081-5083, the applicant must:

(1) Be a medical school as defined in § 17.402(g)(1); and

(2) Have been affiliated with the Veterans Administration under an agreement entered into pursuant to 38 U.S.C. 5051 for at least 12 months prior to the date of the application for a grant under this subchapter II.

(c) To be eligible to receive assistance under 38 U.S.C. 5091-5093, the applicant must:

(1) Be an "eligible institution" as defined in § 17.402(h); and

(2) Be affiliated with the Veterans Administration under an agreement entered into pursuant to 38 U.S.C. 5051, at the time of the award of a grant under this subchapter III.

[38 FR 26191, Sept. 19, 1973, as amended at 46 FR 33522, June 30, 1981]

§ 17.404 Application.

(a) Each eligible applicant desiring assistance shall submit an application in such form and at such time as the Administrator shall prescribe.

(b) Such application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any agreement or award of funds.

(c) Such application shall state the purpose for which the application is made and shall contain a budget and a narrative plan by means of which the applicant intends to conduct the project or program and carry out the requirements of §§ 17.400 through 17.416.

(d) Such application shall include a statement from the appropriate State and areawide planning and development clearinghouse indicating the compatibility and relationship of the proposed program or projects to the overall health care and training plans of the State, region or locality, as required in the Office of Management and Budget Circular No. A-95.

(e) For purposes of 38 U.S.C. 5071-5074: (1) Such application shall be executed by an individual authorized to act for the applicant and to assume in behalf of the applicant, the obligations imposed by the terms and conditions of any award of funds or of any formally executed agreement, including §§ 17.400 through 17.416. When the applicant is a school or college which is not controlled by the State, the application must be countersigned by an official similarly authorized by the State agency responsible for administering the State's contribution to its support.

(2) In addition to the information required in paragraph (c) of this section, such application shall include any proposed agreement for lease of land, buildings and structures under the control of the Administrator.

(3) Such application shall be accompanied by a statement assuring that adequate financial support for the new medical school will be provided by the State or by other sources. This statement must be executed by an appropriate official of the State in which the new school is to be located.

[38 FR 26191, Sept. 19, 1973, as amended at 39 FR 31901, Oct. 1, 1974]

§ 17.405 Agreements and grant awards.

(a) For the purposes of 38 U.S.C. 5071-5074: (1) Within the limits of funds available each year for such purposes, the Administrator, upon recommendation of the Chief Medical Director and after consultation with the Special Medical Advisory Group, may enter into, or continue with, agreements to provide assistance to a total of not more than eight applicants whose proposals in the Administrator's judgment best achieve the purposes of 38 U.S.C. 5071, taking into consideration:

(i) The relative merit of the applicant's overall plan for the establishment of the medical school:

(ii) The suitability of the Veterans Administration medical facility for development as medical school facilities; and the terms of any lease agreement;

(iii) The other facilities and resources available to the applicant to assure the sound establishment and continuing maintenance of the programs of the new medical school;

(iv) The arrangements to be maintained by the school with the Veterans Administration medical facility with which it is to be associated, and the extent to which they will be mutually beneficial to the mission of both; and

(v) The extent of the commitment of the State in which the new school is to be located to the provision of adequate financial support in the establishment of the school and in its continuing operation beyond the end of the program period.

(vi) The presence of existing or developing schools of medicine or osteopathy in the region to be served by the applicant.

(2) The terms of any agreement and the amount of any funds to be awarded shall be determined by the Administrator on the basis of:

(i) The considerations and understandings involved in the lease;

(ii) The Administrator's estimate of the sums necessary to accomplish the adequate extension, alteration, remodeling, improvement, or repair of the building or structures to be leased; and to adequately equip such buildings or structures for the purposes proposed; and

(iii) The Administrator's estimate to the amounts necessary to assist in the payment of the cost of the salaries of faculty, the proportion will not exceed 90 percent of the salaries for the first year of operation, and a like percentage for the second and third years; 80 percent for the fourth year, 70 percent for the fifth year, 60 percent for the sixth year; and 50 percent for the seventh year.

(3) No recipient should anticipate receiving assistance in any one award year totaling more than one-eighth of the funds available for awards pursuant to 38 U.S.C. 5072 for that year.

(4) Notwithstanding any other provision concerning this program set forth in §§ 17.400 through 17.416, the Administrator may not enter into any agreement under Subchapter I of Chapter 82, Title 38, United States Code, after September 30, 1979. This is not to be interpreted as interfering with the continued administration of existing agreements under Subchapter I.

(b) For the purposes of 38 U.S.C. 5081-5083: (1) Within the limits of funds available for such purposes, the Administrator, upon recommendation of the Chief Medical Director and after consultation with the Special Medical Advisory Group, may award grants and other assistance to those applicants whose projects or programs will in the Administrator's judgment best promote the purposes of 38 U.S.C. 5081, taking into consideration:

(i) The relative merit of the project or program proposed by the applicant;

(ii) The other resources available to the applicant to supplement and complement the proposed program or project;

(iii) The capability of the applicant to carry out the proposed program of project, without threat to its accreditation as required in § 17.402(g)(1):

(iv) The extent to which the plan for program or project has been coordinated with Veterans' Administration facility(ies) with which the applicant is affiliated for purposes of the program or project.

(2) The amount of any award shall be determined by the Administrator on the basis of the Administrator's estimate of the sum necessary for the cost of the applicant's approved program or project.

(c) For the purposes of 38 U.S.C. 5091-5093: (1) Within the limits of funds available for such purpose, the Administrator, upon recommendation of the Chief Medical Director and after consultation with the Special Medical Advisory Group, may award grants to those applicants whose projects or programs will in the Administrator's judgment best promote the purposes of 38 U.S.C. 5091, taking into consideration:

(i) The relative merit of the program or project proposed by the applicant;

(ii) The other resources available to the applicant to supplement and complement the proposed program or project;

(iii) The capability of the applicant to carry out the proposed program or project under circumstances which will not compromise the quality of education at the institution nor jeopardize the accreditation of the training program by the appropriate body or bodies recognized for such purposes by the Secretary of the Department of Education.

(iv) The extent to which the plan for the program or project has been coordinated with Veterans' Administration facility(ies) with which the applicant is or proposes to become affiliated for purposes of the program or project.

(2) The amount of any award shall be determined by the Administrator on the basis of the Administrator's estimate of the sum necessary for the cost of the applicant's approved program or project.

(d) For the purposes of any grant program of 38 U.S.C. Chapter 82: (1) All grant awards shall be in writing, shall set forth the total amount of assistance awarded and the total period for which it will be available for obligation by the grantee.

(2) Neither the approval of any project nor the award of any grant shall commit or obligate the United States in any way to make any additional supplemental, continuation, or other award with respect to the approved project or to a portion thereof. For continuation support, grantees must make a separate application annually including an annual budget and report of balances remaining from previous award periods and at such time and in such form as the Administrator may require.

(3) The adequacy of a plan for assuring priority for admission of qualified veterans in all of the health manpower education and training programs, as provided in 38 U.S.C. 5070(e) shall be considered.

[38 FR 26191, Sept. 19, 1973, as amended at 39 FR 31901, Sept. 3, 1974; 46 FR 33522, June 30, 1981]

§ 17.406 Payments.

Payments made pursuant to grant awards may be made in installments, and either in advance or by way or reimbursement, with necessary adjustments on account of overpayments or underpayments as the Administrator may determine.

[38 FR 26192, Sept. 19, 1973]

§ 17.407 Expenditure of grant funds.

(a) For the purposes of 38 U.S.C. 5071-5074, any funds awarded shall be expended solely for the costs of assistance in the establishment of new State medical schools in accordance with the applicable provision of 38 U.S.C., Chapter 82, §§ 17.400 through 17.416, and then the terms and conditions of the grant award.

(b) For the purposes of 38 U.S.C. 5081-5083, any funds granted shall be expended solely for the expansion or improvement of the training capacities of medical schools affiliated with the Veterans Administration and to permit such schools to cooperate with other public and nonprofit institutions of higher learning, hospitals and other health manpower institutions affiliated with the Veterans Administration in the training of professional and other health personnel in accordance with the applicable provisions of 38 U.S.C. Chapter 82, §§ 17.400 through 17.416, and the terms and conditions of the grant award.

(c) For the purposes of 38 U.S.C. 5091-5093, any funds granted shall be expended solely for the costs of assistance in the establishment of cooperative arrangements among universities, colleges, junior colleges, community colleges, schools of allied health professions, State and local systems of education, hospitals, and other nonprofit health manpower institutions affiliated with the Veterans Administration for educational and clinical projects and programs involving allied and other health manpower in accordance with applicable provisions of 38 U.S.C. Chapter 82, §§ 17.400 through 17.416, and the terms and conditions of the grant award.

(d) For the purposes of the entire chapter, 38 U.S.C., Chapter 82, any unobligated funds remaining in a grant account at the close of the award period may be carried forward and will be available during a subsequent award period within the approved program period. The amount of any subsequent award will take into consideration any unobligated balance in the grant account. At the end of the last award period of the approved program period, any unobligated funds remaining must be refunded to the Federal Government.

[38 FR 26192, Sept. 19, 1973, as amended at 46 FR 33523, June 30, 1981]

§ 17.408 Nondiscrimination.

(a) Grants made under 38 U.S.C. Chapter 82 shall be subject to Title IX of the "Education Amendments Act of 1972" (effective July 1, 1972) and regulations promulgated by the Department of Education. Such title prohibits sex discrimination in all federally assisted education programs.

(b) Grants made under Public Law 92-541 (86 Stat. 1100) shall be subject to Title VI of the Civil Rights Act of 1964 (78 Stat. 252) which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. Regulations implementing such Title VI have been issued as §§ 18.1 through 18.4 of this chapter.

(c) Grant funds used for remodeling, alteration, or repairs shall be subject to the condition that the grantee shall comply with the requirements of Executive Order 11246, 30 FR 12319 (September 24, 1965), as amended, and with the applicable rules, regulations, and procedures pursuant thereto.

[38 FR 26192, Sept. 19, 1973, as amended at 46 FR 33523, June 30, 1981]

§ 17.409 Publications and copyright.

Except as may otherwise be provided under the terms and conditions of the award, the grantee may copyright without prior approval any publications, films, or similar materials developed or resulting from a project supported by a grant under §§ 17.400 through 17.416, subject, however, to a

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royalty free, nonexclusive, and irrevocable license or right in the Government to reproduce, translate, publish, use, disseminate, and dispose of such materials and to authorize others to do so.

[38 FR 26192, Sept. 19, 1973]

§ 17.410 Accountability.

The recipient shall allocate expenditures from the grant award between direct and indirect costs according to generally accepted accounting procedures.

(a) For the purpose of 38 U.S.C. 5071-5074, direct grant costs are limited to the Veterans Administration's contribution to the payment of faculty salaries. (§ 17.405(a)(2)(iii).)

(b) For the purposes of 38 U.S.C. 5081-5083 and 5091-5093, direct costs may include in proportion to time and effort spent, but are not limited to, fees and costs directly paid to personnel or for fringe benefits, publications, educational programs, training, or demonstration activities carried out in connection with projects and programs by grantee institutions. In addition, grants made pursuant to 38 U.S.C. 5081-5083 may include costs of construction, provided that such construction is located on land under the jurisdiction of the Administrator and leased to the grantee.

(c) For the purposes of 38 U.S.C. 5081-5083 and 5091-5093, indirect costs may be computed on a percentage basis or on the basis of a negotiated lump-sum allowance in accordance with the principles set forth in the Office of Management and Budget Circulars No. A-88, No. A-87 revised, and No. A-21. In the method of computation used, only indirect costs shall be included which bear a reasonable relationship to the program funded by the grant and shall not exceed a percentage greater than the total institutional indirect cost is of the total direct salaries and wages paid by the institution.

[38 FR 26192, Sept. 19, 1973, as amended at 46 FR 33523, June 30, 1981]

§ 17.411 Records, reports, and audit.

(a) *Records.* Each recipient of assistance shall keep records which fully disclose the amount and disposition by the recipient of the proceeds of the assistance, the total cost of the project or undertaking in connection with which the assistance is made and used, the portion of the costs supplied by other public or private sources, and such other records prescribed by the Administrator as will facilitate an effective audit.

(b) *Reports.* Each recipient of assistance will furnish such periodic progress reports as the Administrator may find necessary.

(c) *Audit.* Any application for assistance shall constitute the consent of the applicant that the Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records which are pertinent to such assistance for the purposes of audit and examination.

[38 FR 26193, Sept. 19, 1973]

§ 17.412 Additional conditions.

The Administrator may with respect to any grant award impose additional conditions prior to or at the time of any award when in the Administrator's judgment such conditions are necessary to assure or protect advancement of the grant purposes, the interest of the Veterans Administration or the conservation of grant funds. All construction, and alterations of buildings and structures, related to the award of a grant or other assistance will be subject to section 102(2)(C) of the National Environmental Policy Act.

[46 FR 33523, June 30, 1981]

§ 17.413 Early termination and withholding of payments.

Whenever the Administrator finds that a grantee has failed in a material respect to comply with the applicable provisions of 38 U.S.C. Chapter 82, §§ 17.400 through 17.416, or the terms of the grant, the Administrator may, on reasonable notice to the grantee withhold further payments and take such other action, including the termination of the grant, as he finds appropriate to carry out the purposes of 38

U.S.C. Chapter 82 and §§ 17.400 through 17.416. Non-cancellable obligations of the grantee properly incurred prior to the receipt of the notice of termination will be honored. The grantee shall be promptly notified of such termination in writing and given the reasons therefor.

[46 FR 33523, June 30, 1981]

§ 17.414 Recapture provision.

(a) If the Administrator determines that any school established with assistance under §§ 17.400 through 17.416:

(1) Is not accredited and fails to gain appropriate accreditation within a reasonable period of time;

(2) Is accredited but fails substantially to carry out the term of the agreement entered into under 38 U.S.C. Chapter 82; or

(3) Is no longer operated for the purpose for which such assistance was granted,

The Administrator shall be entitled to recover from the recipient of assistance the facilities of such school which were established with assistance under §§ 17.400 through 17.416. In order to recover such facilities the Administrator may bring an action in the district court of the United States for the district in which such facilities are situated.

[46 FR 33523, June 30, 1981]

§ 17.415 Right to hearing.

The actions contemplated in §§ 17.413 and 17.414 shall not be taken until the grantee has been afforded an opportunity for a hearing. Whenever a hearing is held under this section the procedures shall be in accord with the provisions of §§ 18.9 and 18.10 of this chapter. Failure of a grantee to request a hearing or to appear at a scheduled hearing shall be deemed a waiver of the right to be heard and constitutes consent to the administrator's decision made on the basis of available information.

[38 FR 26193, Sept. 19, 1973]

§ 17.416 Expansion of hospital education and training capacity.

Expenditures, not to exceed 30 percent of the funds appropriated under 38 U.S.C. 5082 for grants to affiliated medical and other schools, may be made for the extension, expansion, alteration, improvement, remodeling, or repair of Veterans Administration buildings and structures to make them suitable for use for health manpower education and training. In addition, such expenditures may be made to Veterans Administration hospitals and facilities for the development or initiation of improved methods of education and training.

[38 FR 26193, Sept. 19, 1973]

Provisional Regulations

§ 17.951 Instructions relating to hospital, domiciliary care, and medical treatment as affected by Title 38, United States Code, "An act to consolidate into one act all of the laws administered by the Veterans Administration and for other purposes."

(a) *Purpose.* These instructions are issued to implement the provisions of Title 38, United States Code. The law that enacted Title 38, United States Code, repeals Public Law 85-56 (except Title XXII) and amends or repeals other provisions of laws effective January 1, 1959.

(b) *Instructions.* (1) Sections 610(a)(3) and 612(a), Title 38, United States Code provide that hospital care and medical services, as appropriate, may be furnished to persons who but for the receipt of retirement pay would be entitled to disability compensation. Previously, persons with peacetime service only, who were retired for reasons other than disability and who filed claims for disability compensation with the Veterans Administration but did not elect to receive such compensation, were not eligible for hospital care or medical services. They are now eligible even though they do not elect to receive disability compensation from the Veterans Administration.

(2) Section 1506, Title 38, United States Code, provides that veterans receiving vocational rehabilitation may

be furnished such medical care, treatment, hospitalization, and prosthesis as may be necessary to accomplish the purposes of the training whether or not such medical care, treatment, hospitalization, and prosthesis is otherwise authorized under Chapter 17 (Hospital, Domiciliary and Medical Care) of Title 38, United States Code. Persons pursuing a course of vocational rehabilitation who are in need of medical care, treatment, hospitalization and prosthesis for any disability (service-connected or nonservice-connected) to avoid interruption of such training may be furnished such medical care, treatment, hospitalization and prosthesis even though they are residing outside the continental limits of the United States.

(3) Section 101(21)(D), Title 38, United States Code provides that service as a cadet in the United States Military, Air Force, or Coast Guard Academy or as a midshipman at the United States Naval Academy will be considered as active military, naval or air service. Under the new provision any service as a cadet at the United States Military, Air Force, or Coast Guard Academy or a midshipman at the United States Naval Academy will be considered as active military, naval, or air service. Accordingly, cadets and midshipmen attending the academies during a period of war (including the Korean conflict), if otherwise eligible, are entitled to hospital and domiciliary care and medical services.

(c) *Effective date.* Section 2 of Public Law 85-857 provides that the code shall take effect on January 1, 1959. These instructions, therefore, will apply to applications received on and after January 1, 1959, and those active applications pending as of that date.

(d) *Reimbursement for unauthorized medical services.* Reimbursement claims, whether filed prior to or subsequent to January 1, 1959, arising from medical services rendered prior to January 1, 1959, will be adjudicated in accordance with the Veterans Administration regulations and instructions in effect at the time such services were rendered. (Instruction 1, Title 38, United States Code, Chapter 17, Pub. L. 85-857).

[24 FR 603, Jan. 28, 1959]

§ 17.952 Instructions relating to determination of mental competency of members of the uniformed services being furnished medical care in Veterans Administration hospitals.

(a) *Purpose.* These instructions are issued to implement the provisions of sections 601-604 of title 37, United States Code (Pub. L. 87-649, 37 U.S.C. 601-604, superseding the Act of June 21, 1950, as amended by Pub. L. 86-145 of August 7, 1959) relating to the appointment of boards of medical officers for the purpose of determining mental competency of members of the uniformed services. This is in connection with the provisions of that law which authorize the Secretary of the Military Department to which a member of the uniformed services belongs to designate persons to receive active duty pay or retired pay where the member is mentally incapable of managing his own affairs.

(b) *Scope of the law.* Section 602, title 37, United States Code authorizes the determination of mental competency of members of the uniformed services by competent medical authority appointed by the head of the department or agency charged with the hospital or medical care of those members or by a person designated by the head of that department or agency. The term "members of the uniformed services" as used in the act means any person on the active or retired list of the Army, Navy, Marine Corps, Air Force, Coast Guard, Coast and Geodetic Survey, or Public Health Service, including transferred members of the Fleet Reserve and of the Fleet Marine Corps Reserve, and members of the Reserve components of the respective services entitled to Federal pay either on the active or any retired list of said services. Competent medical authority under the statute consists of a board of at least three qualified medical officers or physicians, one of whom must be specially qualified in the treatment of mental disorders.

(c) *Delegation of authority.* Directors of Veterans Administration hospitals are authorized to appoint Boards of Medical Officers, consisting of at least three qualified physicians, one of whom must be qualified in the treat-

ment of mental disorders, to determine whether members of the uniformed services who are being furnished medical care in our hospitals are mentally capable of managing their own affairs.

(d) *Instructions.* In view of the nature of the determination and the need for special staff as well as careful and sometimes lengthy evaluation, appointments of boards of medical officers for the purposes of 37 U.S.C. 601-604 are limited solely to hospitals and determinations as to mental competency will be made only on the basis of inpatient examination. A board will be appointed in all cases where:

(1) A request is received from a military department to determine the mental competency of a member, or

(2) Hospital management feels such determination in the case of a hospitalized member will serve a useful purpose, or

(3) The member is drawing military retired pay and hospital management feels such determination is indicated. (Instruction 1, Pub. L. 87-649, 37 U.S.C. 601-604).

[31 FR 5429, Apr. 6, 1966]

§ 17.953 Instructions authorizing hospital and medical services for veterans suffering from noncompensable peacetime service-connected disabilities.

(a) *Instructions.* Public Law 87-583 amended 38 U.S.C. 610(a) and 612(a) to provide that hospital care and medical services which the Administrator of Veterans Affairs determines are needed, may, within the limits of Veterans Administration facilities, be furnished to veterans suffering from a noncompensable service-connected peacetime disability. In brief, persons in need of hospital care or medical services for a noncompensable service-connected peacetime incurred disability and who were retired or separated for reasons other than disability are now eligible for such benefits.

(b) *Effective date.* This section applies to those applications received for these benefits on and after August 14, 1962, the enactment date of Public Law 87-583. Applications pending on August 14th, on which no determination of ineligibility has been made by the Veterans Administration before that date, may be considered as received on August 14th for the purpose of these benefits. (Instruction 1, Title 38, United States Code, Chapter 17, Pub. L. 87-583).

[27 FR 8972, Sept. 11, 1962]

§ 17.960 Pilot program; use of community (contract) halfway houses, therapeutic communities, psychiatric residential treatment centers and other community-based treatment facilities for eligible veterans suffering from alcohol and drug dependence.

(a) *Definition.* (1) A community halfway house (HWH) for alcohol and/or drug dependence treatment, is defined as a community-based, peer-group oriented, residential facility which provides food, lodging and supportive services in a non-drinking environment for persons involved in a recovery process (or some similar definition which is generic). Licensing requirements vary considerably from state to state and HWHs may be found which are licensed as boarding homes, board and care facilities, intermediate care facilities, and, most desirable, as halfway houses per se. Attention is invited to the discussion of standards for Halfway House Alcoholism Programs, published by the Association of HWH Alcoholism Programs of North America (Address: 786 E. 11th Street, St. Paul, Minnesota 55106).

(2) It is anticipated that about twenty (20) contracts will be established in fiscal year 1980. It is further anticipated that each contract will provide assurance for approximately eighty (80) placements per contract year and that placements will provide for an expected length of stay of sixty days. Selection and approval of contract proposals will be based on the need to obtain data on both urban and rural geographic parameters, and on a number of associated logistical factors of importance. Those medical centers that have specialized Alcohol or Drug Dependence Treatment Programs which are located in or near communities possessing halfway house resources are encouraged to submit contract proposals.

(b) *Responsibilities.* (1) Medical Center Directors are responsible for

designating the appropriate individuals to serve as members of the contracting officer's negotiating team and to develop proposed contracts. They also are responsible for assuring appropriate clinical/administrative participation in the selection and placement of patients, issuing authorizations and processing invoices, inspecting HWHs and coordinating the follow-up of patients. The medical center contracting officer is responsible for negotiating and consummating contracts with HWHs. Copies of negotiated new, amended or canceled contracts will be furnished to the Regional Director and to the appropriate clinic of jurisdiction. A contract format is being developed and will be distributed in Calendar Year 1980. Any contracts required to be negotiated prior to that distribution will be accomplished as a service contract on SF-33 and include all requirements contained in this regulation.

(2) The Regional Director is responsible for maintaining a current file of all contracts within the Region. This file will serve as a regional resource file as to the location and the terms of the contracts for inquiries from other interested facilities. Contract costs are to be charged to DM&S Cost Center 8361 "Alcohol and Drug Treatment and Rehabilitation".

(3) Referral for medical follow-up may be made to another VA medical center or to a Veterans Administration outpatient clinic when the distance between the placing medical center and the HWH or other compelling circumstances would make follow-up by the authorizing medical center impracticable. When two or more facilities place patients in the same halfway house, follow-up services may be exchanged by mutual agreement.

(4) Contracts will be sought with HWHs which meet the standards and desire to furnish care to VA patients. Appropriate medical center personnel will advise the Medical Center Director of suitable HWHs known to them. Every effort will be made to secure contracts to include within the per diem rate in addition to room and meals, the cost of routine medical care, and other necessary services as described in the contract. If this is not possible, it will be necessary for the contract to specify those services and supplies which are not included in the per diem rate.

(c) *Additional VA Minimum Standards.* Standards are to reflect the provision of residential, nutritional, limited health-related services, and social rehabilitation with support and guidance toward the goal of independent living. Since Federal Standards for such facilities are minimal and broadly defined, the facility must meet the following additional VA standards:

(1) The HWH conforms to the standards of the Life Safety Code (National Fire Protection Association #101) in effect on the date of the award of the contract, conforms to the fire and safety code imposed by the State law, which adequately protects residents in HWHs, and meets all city, state, and Federal requirements concerning licensing and health codes. In all cases, the VA requires a level of safety which conforms to NFPA 101. All contract facilities must be licensed under state or Federal authority.

(2) Accreditation and licensing by the State. Accreditation by the Joint Commission on Accreditation of Hospitals is evidence of internal quality assurance mechanisms and is desirable, but is not required.

(3) The notification and contract clause entitled "Privacy Act" as specified in Federal Procurement Regulations 1-1.327 shall be incorporated into this contract by the contracting officer, as will references to 38 U.S.C. 4132, "Confidentiality of Certain Medical Records", and 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records".

(4) Basic services will ordinarily include: (i) A supervised, alcohol and drug free environment, including active affiliation with Alcoholics Anonymous (AA) programs. The facility will be staffed on a 24-hour basis, and have at least one live-in staff member.

(ii) Board and room.

(iii) Laundry facilities for residents to do their own laundry.

(iv) Structured activities: resident participation in group sessions will depend upon resident preference and Alcohol Dependence Treatment Pro-

gram/Drug Dependence Treatment Program-HWH staff recommendations.

(v) A variety of group activities, including physical activities as appropriate.

(vi) Health and personal hygiene maintenance.

(vii) Monitoring of medications.

(viii) Supportive Social Service.

(ix) Individual counseling as required (with special emphasis on vocational rehabilitation counseling, in collaboration with VA program resources).

(5) Records and reports: An individual client record will be maintained on each veteran admitted under this contract, which will include, in addition to reasons for referral:

(i) All essential identifying data relevant to the resident and his/her family including a sociocultural assessment.

(ii) Data relating to the resident's admission.

(iii) Copies of any medical prescriptions issued by physicians, including orders, if any, for medications to be taken.

(iv) Reports of periodic re-evaluation by halfway house staff.

(v) Final summaries on each resident who leaves the program, to include reason for leaving, the resident's future plans, and follow-up locator information.

(vi) Individual case records will be maintained in confidence as required by 38 U.S.C. 4132, "Confidentiality of Certain Medical Records" and 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records". Records will be accessible to the VA's ADTP or DDTP staff, and such data will materially contribute to the evaluation study required by Congress.

(vii) Periodic reports will be provided to the VA (i.e., fiscal accountability) as required.

(6) Staffing: Sufficient staff in numbers and position qualifications to carry out the policies, responsibilities, and programs of the facility. As a minimum, there must be a full-time administrative staff member or his/her staff designee on duty on the premises or residing at the house and available for emergencies 24 hours a day, 7 days a week. Inspection teams are expected to evaluate the contractor's ability to consistently assure the presence of staff capable of providing those services required under the terms of the contract.

(d) *Scope of care.* The care provided is to include:

(1) Opportunities for immediate learning/development of responsible living.

(2) Support for the individual desire for sobriety (alcohol/drug abuse-free life style).

(3) Opportunities for learning, testing, and internalizing knowledge of illness/recovery process, and to up-grade skills and improve personal relationships.

(e) *Pre-Contract assessment.* A multidisciplinary VA team consisting at a minimum of a physician, a social worker, psychologist, or nurse, and an engineering service safety office will conduct an assessment of the home prior to the award of a contract. Programs to be utilized will be restricted to community-based peer-group oriented, residential facilities that provide food, shelter, and service in a supportive, non-alcohol drinking/non-drug abusing environment (abstinence). The Safety Officer will inspect the facility for conformity to the current Life Safety Code and submit the findings to the chairperson of the team. The other members of the team will focus on an assessment of the quality of care provided by the facility and the quality of life within the facility, giving particular attention to the following critical indicators:

(1) General observation of residents indicates that they maintain an acceptable level of personal hygiene and grooming.

(2) The facility meets applicable fire, safety and sanitation standards in attractive surroundings conducive to social interaction and the fullest development of the resident's rehabilitative potential. It is preferably in a central urban location, near public transportation, and not too far from areas which provide employment.

(3) Appropriate organized activity programs during waking hours (including evenings) reflect a high level of activity in the facility.

(4) Appetizing, nutritionally adequate meals are provided in a setting which encourages social interaction and nutritious snacks for between meals and bedtime are available for those requiring or desiring additional food, when it is not medically contraindicated. The addition of nutritious snacks to requirements for board is important for alcohol or drug dependent patients. Many of these patients are either undernourished or have developed poor eating habits because of their addiction. The local VA dietitian may consult with the initial inspection team and the team making subsequent assessments, in evaluating not only the printed menus but the patients' satisfaction with meals and actual consumption of food offered.

(5) Staff behavior and interaction with residents convey a genuine attitude of concern and caring.

(6) Treatment and discharge planning reflect a team assessment of health and social and vocational needs and the involvement of residents' families and appropriate community resources in resolving problems and setting goals.

(7) The facility demonstrates a commitment to constant upgrading of knowledge and skills of staff through provision of documented training programs which respond directly to the resident's treatment needs.

(8) There is evidence of facility-community interaction. This may be demonstrated by the nature of scheduled activities, by information about resident flow out of the facility, e.g., family, volunteers, local consumer services, etc.

(9) There is documented evidence of the facility's commitment to the implementation of the Patient's Bill of Rights.

(10) If urine screening is required or other procedures, there shall be data developed to measure which hospital based services are required.

(11) The report of Pre-Contract Survey, with recommendations, will be submitted to Central Office for review and approval (Attn: 10B/116A3) prior to awarding a contract. Funding will be made available subsequent to VACO approval of proposed contract.

(12) Preliminary to making each inspection of facility and survey of patient care, the team leader (who will usually be a physician assigned to the program) will:

(i) Contact the person in charge of the HWH to arrange date and time of inspection.

(ii) Review report of most recent previous inspection, if any, and discuss with the Chief of Medical Administration, hospital contracting officer and the Chief, Social Work Service, any problems or irregularities which they may have encountered in dealing with the HWH.

(iii) Review terms of existing agreement.

(13) A formal report of each inspection will be prepared and forwarded to the medical center contracting officer. In accordance with normal contract administrative practices, the following actions can be expected to ensue:

(i) The HWH will be advised of the findings of the inspection team.

(ii) In the event deficiencies have been noted, the HWH will be given a reasonable time to take corrective action and to notify the contracting officer that the corrections have been made.

(iii) If satisfactory corrections are not made in a reasonable time, the contracting officer will consult with the concerned officials so that suitable arrangements can be made to discharge or transfer patients and terminate the contract.

(iv) The original copy of the report and pertinent correspondence will be filed in the contract file. Copies of all new, amended or terminated contracts will be sent to the appropriate clinic of jurisdiction and Regional Medical Director.

(14) Contracts will not be initiated until noted deficiencies have been eliminated.

(15) Any unsatisfactory conditions noted during a follow-up visit to a HWH will be reported in writing to the contracting officer through the Medical Center Director.

(16) All HWHs, as a part of the contract, have agreed and warranted that they do not maintain nor provide dual or segregated patient facilities on the basis of race, creed, color or national

origin. As a part of each inspection, special attention will be given to evaluating compliance by the HWH with this requirement. If, during the course of the inspection, an unresolved discrimination complaint arises or maintenance of segregated facilities has been observed, a report will be forwarded to the appropriate regional director (10BA-). The report will contain pertinent facts and observations with a description of action taken to correct the situation. A copy of the report will be given to the contracting officer.

(f) *Subsequent assessments.* Subsequent assessment of the facility must be made at least every two years by a multidisciplinary team including such hospital personnel as the Director considers necessary to assure that the facility provides quality care in a safe environment.

(g) *Guidelines for selection for post-hospital referral.* It should be emphasized that this program is limited to out-placement of eligible veterans who have recently completed detoxification or other hospital level treatment. The program is not intended for use as an emergency boarding house, nor as a way-station for veterans headed for domiciliary placement, nor for treatment prior to hospitalization or rehospitalization. Technical (clinical) guidance, patient selection, and associated coordination will be provided by the Office of the Chief, ADTP, or DDTP, at the contracting VA medical center. Selection will include:

(1) Patients capable of self-preservation. In an emergency situation, the patient should have sufficient capacity to recognize physical danger, sufficient judgment to recognize when such danger requires immediate egress from a group residence, sufficient capacity to follow a prescribed route of egress, and sufficient physical mobility to accomplish such egress;

(2) Patients who, for various reasons, need a slower integration into the community, perhaps requiring a low-skilled job and some help finding a room with cooking privileges;

(3) Alcohol or drug abusing veterans who, because of health problems, may find readjustment to "street life" tough going, and who may need additional time and support in order to be self-supportive;

(4) The alcohol or drug dependent veteran who has an unsatisfactory home environment may need more time to stabilize the changes made in the inpatient unit, before living autonomously;

(5) The semi-stable individual who has a lot of ego strength and some environmental support, but due to crisis, needs a brief inpatient stay and requires a therapeutic milieu.

(h) *Per diem rates and census.* To the degree that any savings are generated by lower per diem rates, census may be adjusted to accommodate placement of additional veterans so long as facilities remain within their dollar allocation. Length of stay at VA cost will be limited to 60 days, unless in exceptional cases a waiver of up to 30 additional days is authorized by the medical center Chief of Staff on the recommendation of appropriate clinical official subject to availability of funds as determined by Fiscal Service. Additional contract funds will not be allocated for placement of veterans at this level of care for post-hospital treatment of alcohol or drug dependence beyond the 90th day.

(i) *Other instructions.* (1) Contracting facilities must certify willingness to make available to the VA documented information as deemed necessary to conduct utilization review audits, to verify quality of patient care for veterans, to assure confidentiality of patient record information, and to determine the completeness and accuracy of financial records. It is anticipated that a comprehensive program evaluation study will be implemented at a date to be determined, and will draw part of its data from the contracted facilities.

(2) Assessment of treatment outcome at periodic intervals is expected of all ADTPs and DDTPs. Veterans provided placement in halfway house or similar residential care facilities under this program, will also be included in such follow-up activities as part of the continuing support and involvement of the contracting VA program.

(3) Review of opinions expressed by the Director, National Institute on Al-

cohol Abuse and Alcoholism, and by the National Association of Halfway House Programs, indicates a cost factor of $17.00 per day for Halfway House Care is a realistic averaged figure for use in estimating costs for contract fee-basis services. Unusual cases requiring higher cost/days may be referred to VACO for review.

(4) Pub. L. 96-22 requires an evaluation report be submitted to the Congress, considering both the treatment and the cost experiences in a comparison with VA-provided care. Such report, covering program operations through September 30, 1982, must be submitted by the Administrator not later than March 31, 1983.

(5) The requirements and mechanism for periodic reporting of program activity are currently under development and will be available to participating field facilities in Calendar Year 1980.

(6) As is noted in the text of the legislative authority, care, treatment and rehabilitative services authorized under Pub. L. 96-22, (38 U.S.C. 620A), may not be provided after the last day of the fifth fiscal year following the fiscal year in which this pilot program is initiated (DM&S Circular 10-80-85).

[45 FR 55717, Aug. 21, 1980]

FINDING AIDS

A list of current CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised semiannually (January 1 and July 1).

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List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since January 1, 1973, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes.

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17 Appendix A revised 11085

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1.513a *Added 7929
1.526 *(g) and (i)(2), (4) and (6)(i) revised 3938
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1.666 Added 34734
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2.93 *Revised 1839
3 *Cross reference added precedes § 3.321 5315
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3.261 (a)(17) revised 26804
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3.400 *(w) heading revised 17222
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3.501 (i)(1) and (3) revised 34115
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3.857 *Revised 12100
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17.36 *Undesignated center heading and section revised 1840
17.37 *Revised 1840
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17.39 *Revised 1841
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3.501 (i)(2) revised 45941
3.551 (a) through (d) revised; (f) amended 45941
(a) and (b) amended; (b) heading and (c) heading revised *35327
3.552 (e) and (j) revised 45941
(g) revised *25393
3.556 Amended 45942
3.656 (a) introductory text and (d) revised 45942
3.657 Heading and text amended 45942
3.660 (a)(1) and (2), (b) introductory text and (2), (c) and (d) revised 45942
3.661 (a)(2) amended 45942
3.662 Removed 45942
3.666 (a) introductory text, (b) introductory text, (1) and (2), (c), (d)(1) and (2) amended; (a)(2) revised 45943
3.700 (a)(3) amended; (a)(4) added; (b)(1) and (2) revised 45943
3.701 (a) revised 45943
3.702 (b) amended 45943
3.708 (a)(3) and (b)(1) amended 45943
3.711 Revised 45943
3.712 Added 45943
3.713 Added 45944
3.850 (a)(1)(ii) and (2) amended *27436
3.851 Amended *27436
3.852 (b) introductory text revised; (b)(2) amended *27436
3.955 Removed 45944
3.956 Removed 45944
3.960 Added 45944
3.961 Added 45944
3.962 Added 45944
3.1601 (a)(2) introductory text and (b) introductory text revised 58710
3.1604 (c) heading revised; (d) added 58710
3.1612 Added 58711
(e)(2)(ii) revised *11806

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4.132 Amended *26327
8.77 (b)(1) amended *9732
8.79 Amended *9732
8.80 Amended *9732
8.80c Amended *9732
8.81 Amended *9732
14.620 Undesignated center heading and section removed *21243
17.30 (k), (l), (m), (n), (p), and (u) revised; (v) and (w) added *6934
17.31 (b)(3) revised *6934
(b)(7) added *43169
17.32 (a)(2) and (c) amended *6935
17.33 (a) amended *6935
17.34 Undesignated center heading and section added *6935
17.36 (b)(1) amended *6935
17.37 (a) and (b) amended *6935
17.38 (a) (1) and (2), and (b) (1) and (2) amended; (c)(2) revised *6935
17.47 (c)(3)(vii) and (viii) amended; (d) revised; (e) removed; (f) redesignated as (e) and revised *6935
17.48 Heading, (a)(1), (b), and (c)(2) revised; (a)(2), (d) introductory text, and (f) amended *6936
17.49 (a)(3)(iii) (*a*) and (*b*) revised; note amended *6936
17.50 Amended *6936
17.50b (a) and (c) amended; introductory text and (i) revised *6936
17.51 (a)(1) amended; (b)(1) and (3) revised *6936
17.53 Revised *6937
17.54 (a) revised; (b) and (c) amended *6937
17.57—17.58 Undesignated center heading added *39847
17.57 Added *39847
(d) corrected *41942
17.58 Added *39847
17.60 Introductory text, (e), (f), and (h) revised; (j) added; (c) amended *6937
17.60a Amended *6937
17.60d (a) amended *6937
17.60f Added *6937
17.60g Added *6937

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17.60h Added *6938
17.96 Amended *6938
17.98 Revised *6938
17.99 Amended *6938
17.100 Introductory text, (a), (c), (d), (e), (f) and (k) revised; (g)(3) added; (h)(1) and (l) amended *6938
17.101 (b) amended *6938
17.119—17.119a Undesignated center heading added *6939
17.119a Added *6939
17.123b Redesignated as 17.123c and revised; new 123b added *6939
17.123c Redesignated from 17.123b and revised *6939
17.155 (a), (b), and (f) amended; (c) revised *6939
17.161 (b) amended *6939
17.165—167 Undesignated center heading revised *6939
17.165 Introductory text revised; (c) and (d) amended *6939
17.165a Amended *6939
17.165b Amended *6939
17.165c Revised *6939
17.165d Added *6939
17.166 Revised *6939
17.166a Revised *6939
17.166b Revised *6940
17.166c Revised *6940
17.166d Amended *6940
17.170—17.177 Undesignated center heading and note revised *38357
17.170—17.176 Revised *38357
17.177 Added *38358
17.170—17.177 Appendix A revised; Appendix B removed *38368
17.180—17.184 Removed *38369
17.210 (d) added *6940
17.212 Amended *6940
17.220 Amended *6940

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3.12a Added ..... †23926
3.13 (b) amended ..... †23926
3.23 (a) and (c) revised ..... †27074
3.24 (b) and (c) revised ..... †27074
3.25 Introductory text, (a), (c), (d), and (e) revised ..... †27074
3.26 Revised ..... †27075
3.203 Revised 72654
3.204 Heading revised 72655
3.205 (a) amended 72655
3.262 (b)(2) revised ..... †27075
3.272 (k) added ..... †9580
3.552 (a)(1) and (b)(3) revised; (k) added ..... †31011
3.557 (a) amended; (b) revised 64910
3.711 Revised ..... †11661
3.712 (a)(1) and (b)(1) revised ..... †11661
3.714 Added ..... †11661
3.1612 (e)(2)(ii) revised ..... †16101
14.633 Revised 47679
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17.36 Revised 80529
17.37 Heading, introductory text, and (b) amended 80529
17.38 (e) amended 47679
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17.39 Revised 47679
17.43 (b) amended 47679
17.48 (b) revised 47680
17.49 (a)(3)(iii)(c), (v), (vi), (ix), (x), (b)(2)(i), (iii), (iv), (v), and (c) and note revised 47680
17.82 Amended 53807
17.84 (a), (c), and (e) amended 53807
17.85 (b) revised 53807
17.123 Introductory text revised 47680
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17.351 Amended 47680
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17.403 (a)(3) revised ..... †33522
17.405 (a)(1) introductory text, (2) (ii), (iii), (b)(1) introductory text and (iii), (2), (c)(1) introductory text and (iii), (2), and (d)(1) revised; (a)(4) added ..... †33522
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17.410 (c) revised ..... †33523
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17.960 Added; interim 55717

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